TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~609.~~ ~~875~~ 28

WILLIAM A. GLASGOW, EXECUTOR OF CHARLES C. SPEARS, DECEASED, APPELLANT.

vs.

DAVID H. LIPSE, IN HIS OWN RIGHT AND AS SURVIVING EXECUTOR OF MOSES LIPSE, DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED SEPTEMBER 26, 1883.

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UNITED STATES OF AMERICA, } ss.
1 WESTERN DISTRICT OF VIRGINIA. }

Pleas in the Circuit Court of the United States of America for the Western District of Virginia, in the Fourth Circuit, before the Honorable Alexander Rives, Judge of the District Court of the United States for the Western District of Virginia, held at the Court Room thereof, in the City of Lynchburg, on Saturday, the first day of April, Anno Domini 1882, *and in the year of the Independence of the United States the* 106*th.*

BE IT REMEMBERED, That heretofore, to wit, on the twenty-fifth day of January, in the year 1879, came David H. Lipse in his own right and as the surviving Executor of Moses Lipse, deceased, William Lipse, Moses Lipse, son of Samuel; George W. Lipse, Jacob Lipse, Isaac Custer, Joseph Lipse, son of Joseph; Hetty McClure (née Lipse) and her husband William McClure, James Craft, Moses Lipse, Montgomery P. Boreing, James M. Boreing, John W. Boreing, Mary R. Hunter (née Boreing) and her husband John C. Hunter, Ellen B. Scott (née Boreing) and her husband Daniel Scott, Susan E. Keplinger (née Boreing) and her husband James M. Keplinger, Virginia A. Keplinger (née Boreing) and her husband Thomas D. Keplinger, Florena E. Boreing, David Lipse and Christopher Lipse by their attorneys and filed their certain bill
2 against William A. Glasgow, Executor of Charles C. Spears, deceased, Madison McCullock, Sallie Lewis and her husband —— Lewis, Sallie Moore Spears, William McCreery, trustee, Robt. K. Godwin, trustee, and William A. McCue, Catharine Huff (née Lispe) and her husband Levi Huff, Barbara Brownlee (née Lipse), widow, John W. Lipse, in his own right and as administrator of John Lipse, deceased, Oscar L. Lipse, Rebecca E. Leffel (née Lipse) and her husband Ferdinand Leffel, Dyce Ann Reynolds (née Lipse) and her husband Luther Reynolds, Samuel M. Lipse, Jr., Martha J. Houseman (née Lipse) and her husband Samuel Houseman, John M. Lipse, William L. Lipse, Rebecca Allen (née Lipse) and her husband John B. Allen, Margaret Lipse, Danville Kessler (née Lipse) and her husband Peter Kessler, Christopher Lipse, Francisco Lipse, Taylor Lipse, Harvey Lipse, in his own right and as administrator of Samuel D. Lipse, deceased, Esther Lipse, widow of said Samuel D. Lipse, deceased, Robert Lipse, Millard F. Lipse,

Anna V. Lipse, Charles Lipse, Bowyer Lipse, Mary Lipse, Caroline Lipse, Eugene Lipse, the last six of whom are infants; Samuel H. Lipse, Virginia C. Showalter (née Lipse) and her husband Samuel Showalter, Charles T. Lipse, Lewis T. Custer, Christopher Custer, Joel G. Custer in his own right and as Executor of Samuel Custer, deceased, Missouri Lollis and her husband W. E. Lollis, Ellen and her husband J. Neighbors, Alex-
ander Smith, Ballard Smith, Coleman Smith, Davis
3 Smith and Jefferson Smith, Henry Lipse, Samuel Lipse, son of Joseph Lipse, Rebecca Watkins (née Lipse) and her husband Moses Watkins, and Catharine Lipse and Joseph Robinson, which bill is in the words and figures following, to-wit:

CIRCUIT COURT OF THE UNITED STATES,
FOR THE WESTERN DISTRICT OF VIRGINIA.

To the Judges of the said Court:

The Bill of complaint and prayer of David H. Lipse, in his own right and as the surviving Executor of Moses Lipse, deceased, William Lipse, Moses Lipse, son of Samuel; George W. Lipse, Jacob Lipse, Isaac Custer, Joseph Lipse, son of Joseph; Hetty McClure (née Lipse) and her husband William McClure, James Craft, Moses Lipse, Montgomery P. Boreing James M. Boreing, John W. Boreing, Mary R. Hunter (née Boreing) and her husband John C. Hunter, Ellen B. Scott (née Boreing) and her husband Daniel Scott, Susan E. Keplinger (née Boreing) and her husband James M. Keplinger, Virginia A. Keplinger (née Boreing) and her husband Thomas D. Keplinger, Florena E. Boreing, David Lipse and Christopher Lipse,

Complainants,

Against,

William A. Glasgow, Executor of Charles C. Spears, deceased, Madison McCullock, Sallie Lewis and her husband
—— Lewis, Sallie Moore Spears, William McCreery,
4 trustee, Robert Godwin, trustee, and William A. McCue, Catharine Huff (née Lipse) and her husband Levi Huff, Barbara Brownlee (née Lipse), widow; John W. Lipse, in his own right and as administrator of John Lipse, deceased, Oscar L. Lipse, Rebecca E. Leffel (née Lipse) and her husband Ferdinand Leffel, Dyce Ann Reynolds (née Lipse) and her husband Luther Reynolds, Samuel M. Lipse, Jr., Martha J. Houseman (née Lipse) and her husband Samuel Houseman, John M. Lipse, William L. Lipse, Rebecca Allen (née Lipse) and her husband John B. Allen, Margaret Lipse, Danville Kessler (née Lipse) and her husband Peter Kessler, Christopher Lipse, Francisco Lipse, Taylor Lipse, Harvey D. Lipse, in his own right

and as administrator of Samuel D. Lipse, deceased, Esther Lipse, widow of said Samuel D. Lipse, deceased, Robert Lipse, Millard F. Lipse, Anna V. Lipse, Charles Lipse, Bowyer Lipse, Mary Lipse, Caroline Lipse, Eugene Lipse, the last six of whom are infants; Samuel H. Lipse, Virginia C. Showalter, (née Lipse) and her husband Samuel Showalter, Charles T. Lipse, Lewis T. Custer, Christopher Custer, Joel G. Custer, in his own right and as Executor of Samuel Custer, deceased, Missouri Lollis and her husband W. E. Lollis, Ellen and her husband J. Neighbors, Alex. Smith, Ballard Smith, Coleman Smith, Davis Smith and Jefferson Smith, Henry Lipse, Sam'l Lipse, son of Joseph; Rebecca Watkins (née Lipse) and her husband Moses Watkins, and Catharine Lipse and Joseph Robinson, Defendants.

5 Humbly complaining shew unto your Honor, your Orators and Oratrixes, the said David H. Lipse, and the others, who, in the caption of this Bill are named as complainants, (all of whom are now residents of the State of Virginia), that on the — day of ——, 1859, at his residence, in the County of Botetourt, in Virginia, died Moses Lipse, having made his last will and testament, which was admitted to probate in the County Court of the said county at its May Term, 1860, an authenticated copy whereof, marked "A," is herewith filed:

That your Orator, who then, (as he now is), was a citizen of the State of Indiana, and your Orator's brother, Samuel M. Lipse, since deceased, were, by the said will, named the Executors thereof and duly qualified as such in the County Court of said county, on the 10th day of June, 1860, as appears by an office copy of the order of the said County Court, which, marked "B," is herewith filed:

That the Testator left considerable real and personal estate in the said county, and, as appears from the second item of the said will, he directed that, after his death, all of his real estate be sold by his said Executors and the proceeds be equally divided between all of his children and their representatives. Your Orators further represent that at his death the Testator left twelve living children, his only heirs at law, to-wit:

6 Your Orator, David H. Lipse and his late co-executor, Samuel Lipse, deceased; Christopher Lipse, Moses Lipse, Joseph Lipse, John Lipse, Susan Custer, Ann Boreing, Barbara Brownlee, Polly Craft, and Catharine Huff, of whom besides your Orator, the said David H. Lipse, only Moses Lipse, Barbara Brownlee and Catharine Huff now survive:

That the said Ann Boreing died intestate on the — day of ——, in the year ——, leaving her surviving husband, the Complainant M. P. Boreing, and all her children, the Com-

plainants James M., John W., and Florena E. Boreing, Mary R. Hunter, Ellen B. Scott, Susan E. Keplinger and Virginia A. Keplinger, as her only heirs at law:

That Polly Craft died intestate on the — day of ——, in the year ——, leaving her surviving her son, the Complainant James Craft, as her sole heir:

That the said John Lipse, in Craig County, Virginia, died intestate on the — day of ——, in the year ——, leaving him surviving six children who are the Defendants, John W. Lipse, who, on the — day of ——, in the year ——, in the County Court of Craig County in Virginia, qualified as administrator of his father, Oscar L. Lipse; Rebecca E., who is the wife of Ferdinand Leffel; Dyce Ann, who is the wife of Luther Reynolds; Samuel M. Lipse and Martha J., who is the wife of Samuel Houseman his only heirs at law:

That Daniel Lipse, on the — day of ——, in the year ——, in the said County of Botetourt, died intestate, leaving him surviving eight children, who are the Defendants: John
7 M. Lipse, William Lipse, Rebecca, wife of John P. Allen; Margaret Lipse, Danville, wife of Peter Kessler; Christopher, Francisco and Taylor Lipse, his only heirs at law:

That Samuel Lipse, on the — day of ——, in the year ——, in the said County of Botetourt, died intestate, leaving him surviving nine children, who are the Defendants, Harvey D. Lipse, (who, on the — day of ——, in the year ——, in the County Court of the said County of Botetourt, qualified as administrator of his father), Samuel H. Lipse, Charles T. Lipse, Virginia C., wife of Samuel Showalter; and John Lipse, who has since, on the — day of ——, in the year ——, in the said County of Botetourt, died intestate, leaving him surviving the said Esther, his widow, and eight children, to-wit: Robert and Millard F. Lipse, who are adults; and Anna V., Charles, Bowyer, Mary, Cary and Eugene Lipse, who are infants; and William Lipse of Tennessee, Moses Lipse of Georgia, George W. Lipse of Indiana, and Jacob Lipse of Texas—the last four being in the caption named as Complainants—his only heirs at law:

That Susan Custer, on the — day of ——, in the year ——, in the County of Roanoke, in said State, died intestate, leaving her surviving six children, to-wit: The Complainant Isaac Custer, and the Defendants Joel G. Custer, Lewis T. Custer, Christopher Custer, Ann Smith, who has since died intestate leaving her surviving her husband Jefferson Smith and her children, to-wit: Missouri Lollis, Ellen Neighbors, Alex-
8 ander Smith, Ballard Smith, Coleman Smith and Davis Smith; and Samuel Custer, who, on the — day of ——,

in the year ——, in the said County of Roanoke, died testate, leaving as his sole executor and legatee the said Joel G. Custer, as is shown by his will, which, marked "C," is herewith filed; her only heirs at law:

And that Joseph Lipse, on the — day of ——, in the year ——, in the said County of Botetourt, died intestate, leaving him surviving six children, who are the Defendants, Henry Lipse, Samuel Lipse, Catharine Lipse, Rebecca, wife of Moses Watkins; and the Complainants, Joseph Lipse and Hetty, wife of William McClure.

Your Orators further represent that the persons who are named in the caption of this Bill as Complainants are all residents of the United States, but are non-residents of Virginia; and that all of the persons who are named in the caption of this Bill as Defendants are residents of the said Western District of the State of Virginia, except the said Sallie Moore Spears, (who is an infant of tender years), and her mother, the said Sallie Lewis, and her present husband and William McCreery, who are residents of West Virginia.

Your Orators further represent that the real estate which belonged, at his decease, to the Testator, Moses Lipse, which he, by his said will, devised to be sold by his said Executors, consisted of a very valuable tract of land, situated on Looney's or Mill Creek, in the said County of Botetourt, and
9 containing 391 acres, more or less, and is the same now occupied and claimed by the Defendant, Madison McCullock. Your Orators further represent that in obedience to the will of their Testator, his Executors did by agreement under seal, executed by all the parties, and dated the 10th day of September, 1860, sell to the said Charles C. Spears, in his lifetime, the said real estate, whereof as aforesaid, the Testator died seised and possessed, consisting of 391 acres, as aforesaid, for the sum of $38 per acre, amounting, in the aggregate, to the sum of fourteen thousand eight hundred and fifty-eight dollars; whereof one-third was to be paid to them on the 3d day of October, 1860, and the balance, in two equal installments, on the 3d day of October, 1861, and on the 3d day of October, 1862; for which installments the said Spears executed his two several bonds; and that of the said purchase money, the first or cash installment, to wit: one-third of $14,858 was paid in the gold coin of the United States, or its equivalent, by the said Spears in his lifetime, to wit: on or before it became due, as aforesaid; but that not one dollar of the residue of the said purchase money was paid by the said Spears, or by any one else for him, either in his lifetime or after his decease. That the said

Spears, in the said County of Botetourt, on the 2d day of September, 1862, after the second but before the third installment of purchase money became due and payable, died testate, leaving him surviving his widow, Sallie Spears, now the
10 wife of —— Lewis, and his daughter, the said Sallie Moore Spears, then "en ventre sa mere," and by his will, an office copy whereof, marked "D," is herewith filed, he devised to his said widow and her unborn child his estate, and appointed as his sole Executor his friend William A. Glasgow, who, in the said County Court of Botetourt, afterwards duly qualified as such by order of Court, an office copy whereof, marked "E," is herewith filed.

Your Orators further allege, that at the time of the death of the Testator, Moses Lipse, the Complainants, and especially the Executor, David H. Lipse, were non-residents of the State of Virginia, the said David H. Lipse then residing, as ever since that time he has resided, in the State of Indiana, and that in obedience to the will of his father, without, however, changing his residence, he came to the said County of Botetourt, in the State of Virginia, and, together with his brother, the said Samuel Lipse, in May, 1860, qualified as Executors of their father, under his will, as has already been stated; that after he and his brother had jointly made sale of the said 391 acres of land to the said Charles C. Spears, for the said sum of $14,858, and had jointly received, from the said Spears, the cash payment, one-third of the said purchase money, he, the said David H. Lipse, returned to his home in Indiana, where he has ever since resided; that he returned home before the commencement of the late Rebellion of States of this Union, which were leagued together under the name of the
11 "Confederate States," against the Government of the United States; but that his co-executor, the said Samuel Lipse, remained in the County of Botetourt, Virginia, during the entire period of the said Rebellion, up to the time of his decease, which took place after its close, to-wit, on the — day of —— in the year ——.

Your Orators repeat, alleging distinctly, that no part of the second or third installments of the said purchase money was ever paid either by the said Charles C. Spears, in his lifetime or since his decease, by the said Executor of the said Spears, or by any one else, either to the said Executors of Moses Lipse deceased, jointly or to either of them separately, whether before or after the death of the said Samuel or to any one else, but that the whole of the said installments still remain due and unpaid to the estate of the said Moses Lipse deceased, whereof your Orator, David H. Lipse, is the sole surviving personal representative.

Your Orators further state that the said tract of land was sold by the said Executors of Moses Lipse, deceased, for the sum of fourteen thousand, eight hundred and fifty-eight dollars, and that the same was payable only in the legal-tender money of the United States, under the laws in force and prevailing in the State of Virginia at ~~the~~ time of the sale of the said land, to-wit: on the tenth day of September, 1860; and that *the said purchase money could not be legally discharged*, except by the payment of such legal-tender money.

Your Orators further represent that during the continuance of the said Rebellion, whilst the Complainants were
12 loyal citizens of the United States (as in point of fact they always have been), and whilst the Executor, David H. Lipse, was at his home in Indiana, and the flagrancy of the war then pending, made it impossible for them to visit the County of Botetourt and to attend to and to protect their interests, or even lawfully to communicate with Samuel Lipse, the Executor, then there resident within the actual limits of the organized Rebellion; that the said Executor of the said Spears, deceased, in person, or by his agents, did, in the months of March and April, 1863, contrive and execute a plan to obtain a deed of conveyance of the said tract of land to him (the said Glasgow) as Executor of the said C. C. Spears, deceased, without first having fairly paid and lawfully discharged the just claim thereon of the estate of Moses Lipse, deceased, for the second and third installments of purchase money, which amounted at that time to a large sum, to-wit: to the sum of $9,905.33, with lawful interest thereon from the 3d of October, 1860. The said Executor of the said Charles C. Spears, deceased, was a lawyer of much learning and experience in his profession, and a resident of Botetourt, well acquainted with all the parties and their circumstances; and well knew that the said ante-bellum debt was contracted to be paid in the gold coin of the United States or its equivalent; that the Executors of Moses Lipse, deceased, could not properly receive in discharge of that debt anything except such coin or its equivalent; that
13 the power to sell the said land had been reposed jointly in the two Executors of the said Moses Lipse, deceased, by his will; that both had qualified and acted as such Executors; that both had jointly sold the said land, and that the purchase money therefor was payable to both the Executors jointly, and that they could not lawfully and properly convey the said land to him as Executor of Spears, or otherwise, without the previous payment and lawful discharge of the said installments of purchase money; and that according to the laws in force and prevailing in Virginia at the time of the

sale, no valid conveyance of said land could be made by one of the two Executors to whom the power of sale and conveyance had been by the will jointly intrusted; and being well acquainted with the parties and the circumstances of the case, he knew that the Complainants—and especially your Orator, the said David H. Lipse—were then residing in Indiana, or in other loyal States of the United States, and were regarded by the Confederate States Government "as alien enemies," and their rights and property deemed liable to forfeiture and confiscation under the laws therein prevailing. Yet notwithstanding his knowledge of these principles and facts, the Executor of Charles C. Spears, deceased, fortified with an Act passed on the 5th March, 1863 by the Legislature, then assembled at Richmond in Virginia, and (it is said)
intended to meet this very case, and to provide that
14 whenever any fiduciary residing in Virginia had been
authorized to exercise any power or do any act jointly with one or more fiduciaries residing within the limits of the United States, it should be lawful for the fiduciary residing within the limits of Virginia to exercise such power and to do such act without the concurrence of the non-resident fiduciary, and armed with all the Cofederate enactments for sequestrating the property of alien enemies, within the limits of the insurgent States, and loaded with the Treasury notes issued by the said Confederate States, he, Spears' Executor, sought the resident Executor of Moses Lipse, and proposed and insisted that the latter should receive said Confederate currency in payment of said unpaid installments of purchase money.

In vain, Samuel Lipse refused to receive such currency; disavowed his right as Executor to do so; claimed that the debt was payable in the lawful money of the United States, and that he could receive none other, and urged that his co-executor, D. H. Lipse, and half of the legatees, were residents of the United States, and could not, and would not, receive such currency, and that neither himself nor the resident legatees, were willing to receive the same in payment for said land, and that even if he should receive it, he *alone* could make no valid conveyance, and that his co-executor must necessarily join in the deed to make it
valid. All of these objections availed nothing to defeat
15 the purpose of Spears' Executor, who represented then
to Samuel Lipse that the said "Act" had passed *to meet the case*, and to authorize him, alone, to make the conveyance, and that he was compellable to make it, and in fact he environed the resident Executor with a net of circumstances, which were designed and were sufficient to control that perfect freedom of will and action which the resident Executor was entitled to

exercise in the matter, and which net of circumstances was tantamount, if not to technical, at least to moral duress. At length, *under such compulsion*, he did receive a check, drawn by Spears' Executor on the Bank of Fincastle, in Botetourt County, for the amount of the unpaid installments of the purchase money, which check, however, was never paid by the said bank, though due diligence was used to present the same and demand payment of the sum of money for which it was drawn: the said bank *refusing* to pay the same, *except* in said Confederate currency, Spears' Executor having deposited in the bank Confederate currency only wherewith to meet the said check. And the said Samuel Lipse, under the compulsion aforesaid, did deliver up the bonds which had been given for said installments, and did execute the deed dated the 7th day of April, 1863, purporting to convey said land to William A. Glasgow as Spears' Executor (an office copy of which deed, marked "F," is herewith filed), but the recital therein contained, to the effect that the conveyance was made in
16 consideration for the sum of $14,858 entirely paid up to the Executors of Moses Lipse, deceased, part by the said Spears in his lifetime, and the balance since his death, by said Glasgow, his Executor, is here pronounced untrue. Your Orators further allege that neither the Complainant, David H. Lipse, as Executor aforesaid, nor otherwise, nor any other of the Complainants, ever received or accepted at said Bank or elsewhere, the said sum of money specified in said check, or any part thereof, of which check they had no knowledge. And they further allege, that, as they are informed, neither the resident Executor, nor any of the resident legatees, ever received, *of their own free will*, the said sum of money specified in the said check, either at said Bank or elsewhere—in any manner or form whatever, but that if they did, or if any one of them did, receive the same or any part thereof in Confederate currency, the said currency was forced upon them by the compulsion of circumstances wherewith they were surrounded by the conduct of Spears' Executor or his agents. At all events, your Orators humbly submit, that they were entitled to receive the lawful money of the United States from Spears' Executor for the said unpaid purchase money; that they, and none of them, ever received the same, or any part thereof, in such lawful money, or in anything else; that they were not bound by the sole action of the said resident Executor (whereof they were wholly ignorant at the time and long after-
17 wards), even had such action been free and untrammelled, in receiving an unlawful currency in discharge of their lawful debt; that the said resident Executor had no

lawful authority to convey said land to Spears' Executor, or to any one else, without previous payment of the price of the land in lawful money, and without the concurrence of his co-executor in the deed, and the said pretended "Act" of Legislature, designed to give him such authority, could not suffice for such purpose, because such act was null and void, inasmuch as it was an impairment of the obligation of the contract of sale, and inasmuch as it was designed to militate, as in fact it did militate, against the rights of loyal citizens of the United States; and that therefore the said deed, executed as aforesaid by the resident Executor, Samuel Lipse, on the 7th day of April, 1863, and purporting to convey the said land to Spears' Executor, is of none effect whatever, and should be set aside and annulled. And they also submit that the second and third installments of purchase money, are still unpaid and undischarged, and are still a subsisting debt against the estate of the said C. C. Spears, and constitute a valid lien on the said land in the hands of the Defendant, Madison McCullock, who now occupies and claims the same under pretended purchase thereof by him and one Joseph F. Robinson, of William A. McCue, to whom Spears' Executor sold and conveyed same.

Your Orators being so informed, charge that on the 18 7th day of April, in the year 1863, the very day on which Samuel Lipse executed the said deed conveying the said land to said Spears' Executor with *general* warranty, the latter executed a deed conveying the same land to William A. McCue, with special warranty, for the sum of $15,000, whereof $3,000 were paid in Confederate currency, and the residue was payable on the 18th day of August, 1882, in gold coin of the value of the alloy of the United States of America, 1861, with interest thereon at six per cent. per annum, payable on the 1st day of January, 1864, and annually thereafter, in such funds as might be current in the State of Virginia, or in merchantable corn and flour at two dollars per bushel for corn and fifteen dollars per barrel for flour, as the said Glasgow, Executor, &c., might from time to time elect to receive it, or in gold coin or its equivalent, if the said McCue preferred to pay the interest in such medium. And by a deed of the same date, to wit: the 7th of April, 1863, said McCue conveyed the said land to Wm. McCreery in trust to secure to said Spears' Executor the payment of said residue of $12,000 in gold coin, with the interest thereon as aforesaid, a copy of which deeds of conveyance and trust, marked "G" and "H" respectively, are filed as exhibits and are prayed to be read as a part of this Bill.

Your Orators further represent, that by deed, dated 2d day

of November, 1863, said McCue sold and conveyed the said land to Joseph F. Robinson and Madison McCullock, in
19 consideration of the sum of $23,500, whereof $11,500 were in hand, paid in Confederate currency, and the residue thereof, to-wit, $12,000, were to be paid in gold coin of the value of the alloy of the United States of America, in the year 1861, with interest thereon payable on the 1st day of January, 1864, and annually thereafter, precisely in the same manner as is set forth for the payment of the interest in the deed aforesaid of Spears' Executor to the said McCue; that on the same day the said Robinson and McCullock conveyed the said land to Robert K. Godwin, in trust to secure to the said McCue the payment of the said sum of $12,000, with interest as aforesaid. And that on the day last aforesaid by an endorsement in writing on the deed of trust last aforesaid, signed and sealed by the said William A. McCue, the latter assigned the deed of trust last mentioned to Spears' Executor as collateral security for the performance of his obligation, set forth in the deed of trust executed by said McCue, 7th of April, 1863, to said Mc Creery for the benefit of said Spears' Executor, and that both of the said deeds of trust and the endorsement aforesaid, were duly admitted to record in the clerk's office of the County Court of the said County of Botetourt on the days of their date respectively, as were also all three of the deeds of conveyance of the said land herein set forth as aforesaid, and also the will of the said Moses Lipse, deceased, copies of the deed of conveyance to Robinson and McCullock, and also the deed, subsequently executed by said Robinson conveying all his
20 right, title and interest in and to the said land to the said McCullock, and the deed of trust of said Robinson and McCullock to said Godwin, marked "I," "K," and "L," respectively, are herewith filed as exhibits and prayed to be read as part of this bill.

And your Orators charge that the said McCue, Robinson and McCullock, respectively had notice at the time of the said conveyances to them, respectively, of the defect in the title of Spears' Executor to the said land, and of the equitable rights of the complainants thereto.

In consideration of the premises, and for as much as they are remediless, save in a Court of Equity, your Orators, whose names are fully set forth in the caption, pray that they be allowed to file this, their bill of complaint and prayer against the several persons who are distinctly named in the said caption as defendants, and that the said defendants be required to answer in solemn form all and singular the allegations hereof as fully and as particularly as if the same were here again specifically

repeated, and they thereto especially interrogated, the adults in proper person, and the infants by guardian ad litem; that there be a decree ordering the said Glasgow, as Executor of the said Spears, deceased, to pay de bonis testatoris to your Orator, David H. Lipse, as surviving Executor of Moses Lipse, deceased, the sum of $9,905.33, with interest thereon
21 from the 3d of October, 1860, till paid, such being the amount of principal and interest of the second and third installments of purchase money.

That the deed executed the 7th April, 1863, by said Samuel Lipse, one of the two Executors of Moses Lipse, deceased, conveying said tract of 391 acres of land to said Spears' Executor be set aside and annulled. And that the two other deeds of conveyance and the two deeds of trust, hereinbefore set forth, be also set aside and annulled, so far as they may obstruct the rights or obscure the title of the complainants, or any of them, in and to the said land, or to impair their remedy by subjecting said land to sale to satisfy the unpaid purchase money thereof; that it be decreed, also, that unless the said second and third installments of purchase money be paid in a prescribed period, by the said Spears' Executor, or by some one for him, then the said land shall be sold and the proceeds be applied to the payment of the said second and third installments of purchase money. And that such other and further and general relief in the premises be granted unto your Orators as the nature of their case may require, and as unto equity shall seem meet, and they will ever pray, &c.

DAVID H. LIPSE.

Surviving Executor of the last will and testament of Moses Lipse, deceased, and the others named in the caption as complainants. By their counsel.

22 G. W. HANSBROUGH and MAYS & MAYS, Counsel.

Exhibits A and B filed with O. Bill.

In the name of God, Amen:

I, Moses Lipse, of the County of Botetourt and State of Virginia, being convinced of the uncertainty of life and the certainty of death, wishing to make a disposition of my worldly effects and being of sound mind and memory, do constitute and make this my last will and testament, hereby revoking all other wills by me made.

1st. I will that all my just debts be paid by my Executors out of any money belonging to my estate.

2nd. Secondly, I will that after my death all my personal

as well as my real property be sold by my Executors and equally divided between all my children and their representatives.

Thirdly. That the amounts which I have charged to each of them is to be deducted out of each one's portion as it shows on this my will. I will here state that I have already advanced to my children the following amounts:

1. To my son David H. Lipes eight hundred and seventy-three dollars.

23 2. To my son Samuel Lipes seven hundred and six dollars and fifty-seven cents.

3. To my son Christopher Lipes eight hundred dollars.

4. To my son Moses Lipes eight hundred and eighty dollars.

5. To my son Daniel Lipes nine hundred and fifty dollars and seventy-one cents.

6. To my son Joseph Lipes two hundred and fifty-three dollars and sixty-six cents.

7. To my son John Lipes six hundred and eighty-two dollars.

8. To my daughter Susan Custer nine hundred and eighty dollars and four cents.

9. To my daughter Ann Boreing eighteen hundred and thirteen dollars and 55 cents.

10. To my daughter Barbara Brownlee twelve hundred and eighty dollars.

11. To my daughter Polly Craft nine hundred and ninety-four dollars.

12. To my daughter Catharine Huff eight hundred and ten dollars.

4th. Fourthly. I will that my daughters Polly Craft and Ann Boreing shall have the use and entire control of any money or property coming to them and not their husbands to use or control any of said money or property. *Fourthly.* I constitute my sons Samuel and David Lipes my executors of this my last will and testament.

In witness whereof I hereunto set my hand and affix*ed* my seal this 5th day of December, 1859.

Teste: MOSES LIPSE, [SEAL.]

JOHN B. ALLEN,
NEWTON SWITZER.

AT BOTETOURT MAY COURT, 1860.

This instrument of writing, purporting to be the last will and testament of Moses Lipes, dec'd, was this day ex-

24 hibited in Court and proved by the oaths of John B. Allen and Newton Switzer, subscribing witnesses thereto, and ordered to be recorded.

A copy—teste: F. WOLTZ, Cl'k.
A copy—teste: B. M. ALLEN, Cl'k.

IN BOTETOURT COUNTY COURT, JUNE 11, 1860.

On motion of Samuel Lieps and David Lieps, the Executors named in the last will and testament of Moses Lieps, deceased, who having first made oath and with security approved by the Court entered into and acknowledged a bond in the penalty of $30,000, conditioned according to law, certificate is granted them for obtaining a probat thereof in due form, and it is ordered that Joseph Robinson, Newton Switzer, John Shafer and Wm. J. Dickey, or any three of them, after being first duly sworn, do appraise the real and personal estate of said decedent, and make report thereof to Court.

A copy—teste:

B. M. ALLEN, Clerk.

Exhibit C, filed with O Bill.

In the name of God, Amen:

I, Samuel Custer, of the County of Roanoke and State of Virginia, being of sound and disposing mind, hereby make and constitute this to be my last will and testament, hereby *revoking* all former wills by me made, viz:

I hereby direct that all of my personal property be sold at public auction and the proceeds of the sale be applied to the payment of my debts, and also direct that my executors take charge of the crops now growing on the place as long as I have it rented, and apply the proceeds to the payment of my debts. Joel G. Custer and Isaac Custer are hereby appointed to carry out the above provisions.

I hereby give and bequeath the tract of land known as the Bradley tract, laying in Craig County, to my brother, Joel G. Custer.

The entire *balance* of my *estate*, after my just debts are paid, I give to my brothers, and the children of my sister, Ann Smith, deceased, to be equally divided between them—that is to say, that Joel G. Custer, Isaac Custer, Christopher Custer, Lewis T. Custer, and the children of Ann Smith, deceased, shall have each one share; the said children to have one share, to be equally *divided* between them. My real *estate* I direct to be controlled entirely by Joel G. Custer until a majority of the heirs see cause to sell the same.

Given under my hand and seal this 17th day of April, 1872.

SAM'L CUSTER.

Teste:

WILLIAM W. BRAND.

DAVID BARNETT.

AT ROANOKE COUNTY COURT, MAY TERM, 1872:

26 The last will and testament of Samuel Custer, deceased, was this day produced in Court and proved according to law by the oaths of William W. Brand and David Barnett, subscribing witnesses thereto, and thereupon the said will is ordered to be recorded, it appearing that the same has affixed thereto duly cancelled United States Internal Revenue stamps of the value of one dollar and fifty cents. And Isaac Custer, one of the Executors named in the said will, declines to take upon himself the burden of the execution of said will, and on the motion of Joel G. Custer, another of the said Executors named in said will, who made oath thereto and together with Isaac Custer and Jefferson Smith, his securities, (who justified), entered into and acknowledged a bond in the penalty of Six Thousand Dollars, conditioned as the law directs, certificate is granted him for obtaining a probate of the said will in due form.

A copy from the records of Court.

Teste: WM. McCAULEY, Clerk.

A copy—teste:

WM. McCAULEY, Clerk.

Exhibit D, filed with O. Bill.

I, Charles C. Spears, of Botetourt County, Virginia, considering the uncertainty of life, do make my last will and testament as follows, viz:

27 1. I desire my just debts to be paid.

2. I give to my wife Sally, in lieu of Dower or other interest in my estate, the slaves held by me which were acquired by my intermarriage with her, also my interest in lands acquired by my intermarriage with her which may not be disposed of at my death, also the sum of five thousand dollars, payable in five annual installments of one thousand dollars each, the first payable in one year from my death, to be her absolute property in fee simple.

3. In case I have a child or children by her, living at my decease, I desire the annual profits of the balance of my estate, or so much thereof as may be necessary, to be applied to my Executor to the proper maintenance and education of such child or children, and the balance of such estate, with any accumulation of profits that may remain, to be given to such child on attaining 21 years of age, or if more than one child, to be equally divided among them, each receiving an equal amount, as of the time of attaining that age.

4th. In case there be no such child or children, or in case there be such and he or they die before attaining 21 years of

age, then it is my desire that the residue of my estate not given to my wife in the second clause aforesaid, be held by my Executor, and that one-half of the profits thereof, after deducting the expenses of managing the same, be paid annually to my wife Sally during her life, and that the other half be paid in like manner to the use of my sister Elizabeth and her
28 children. At the death of my wife the estate thus held by my Executor to go entire to my sister Elizabeth and her children.

5th. My Executor is authorized to sell and convey any part of my estate, real or personal, at any time he may deem it advisable to do so.

Lastly, I appoint my friend W. A. Glasgow Executor hereof, and desire that in qualifying as such no security be required of him.

Given under my hand this 9th day of February, 1861.

C. C. SPEARS.

Signed and acknowledged by C. C. Spears as his last will and testament, in our presence and in his presence and in the presence of each other, we subscribe our names as witnesses hereto at his request.

S. MEREDITH,
WM. McCREERY.

At Botetourt October Court, 1862:

This instrument of writing, purporting to be the last will and and testament of Charles C. Spears, deceased, was this day exhibited in court and proved by the oath of Samuel Meredith, a subscribing witness thereto, and continued for further proof and At Botetourt November Court, 1862, the above instrument of writing was fully proved by the oath of Wm. McCreery, another subscribing witness thereto, and ordered to be recorded.

Teste: F. WOLTZ, Clerk.

A copy from the records--teste:

T. H. ALLEN, D. C.

29 [Exhibit E, referred to in the foregoing bill is not to be found among the papers of this cause.—F. W. Rives, Clerk.

Exhibit F, filed with O Bill.

Whereas, Samuel Lipes and David H. Lipes, Executors of the last will and testament of Moses Lipes, deceased, late of Botetourt County, Virginia, did, by written contract signed by them of date September 10th, 1860, sell the lands of which their Testator died seized to Charles C. Spears at the price of

thirty-eight dollars per acre, one-third of the money to be paid October 3d, 1860, and the balance in two equal payments on the 3d of October, 1861 and 1862; and on the 2d day of September, 1862, the said Spears departed this life, having first made his last will and testament, which was admitted to probate in the County Court of said County, by the terms of which W. A. Glasgow is appointed Executor, and as such authorized to sell and convey any part of his estate, personal or real, at any time he might deem it advisable to do so. The said Glasgow duly qualified before the said Court as Executor. The lands thus sold were surveyed conformable to the contract by Chas. Aunspaugh, surveyor of said county, on the 26th September, 1860, and were found to contain 391 acres (amounting in price to $14,858), and are hereinafter particularly described by the terms of said survey. And whereas, the said David H. Lipes resides in the State of Indiana within the limits of the United States; by act of the General
30 Assembly of Virginia it has been provided that whenever any fiduciary residing in this State has been authorized to exercise any power or do any act jointly with one or more fiduciaries residing within the limits of the United States, it shall be lawful for the fiduciary residing in this State to exercise such power to do such act without the concurrence of the non-resident fiduciary, and the act of the resident fiduciary shall have the same force and effect to all intents and purposes as if it had been the joint act of all such fiduciaries.

Now, therefore, this deed, made the 7th day of April, in the year 1863, between Samuel Lipes, Executor of Moses Lipes, dec'd, of the first part, and William A. Glasgow, Executor of Charles C. Spears, dec'd, of the second part,

WITNESSETH, That in consideration of Fourteen Thousand, Eight Hundred and Fifty-Eight Dollars, entirely paid up to the Executors aforesaid of Moses Lipes, dec'd, part by the said Spears in his lifetime, and the balance by the said Glasgow, his Executor, since his death, the said Samuel Lipes, Executor of Moses Lipes, dec'd, doth grant unto the said Wm. A. Glasgow, Executor of Charles C. Spears, the lands of which Moses Lipes died seized, *situate* on Loony's or Mill Creek in said County and bounded as follows, viz: Beginning at a white oak on a line of Samuel Lipes' land corner to the land of Waskey
& Switzer and with the latter S. 16 E. 401 poles crossing
31 the ridge road at 88 poles, the M'Adamized road at 187 poles, Mill Canal at 190 poles and Mill Creek to a stake on a line of Lackland's heirs land below two white oaks and a white oak stump, thence with said heirs S. 89¾ W. 90 poles to a *hicory*, black oak and white oak on top of a hill corner to

the 8 acre survey, and including the same, S. 1¼ W. 18¾ poles to between a poplar and white oak, N. 85 W. 94 poles to 2 white oaks now marked by *choping* upwards, at a fallen red oak and fence N. 66¾ E. 32 poles to 2 white oaks and a red oak and a gum on a hillside, thence with the land of John M. Robinson's heirs N. 19 W. 132 poles to a stake on the south bank of Loony's Mill Creek N. 16 W. 284 poles, crossing the Creek and crossing the M'Adamized road at 34 poles to a post oak tree and 2 gums and a white oak sapling with pointer blazes, thence with —— Stine's land S. 72½ E. 48½ poles to a large white oak S. 67¾ E. 34¾ poles passing a stake in the Jackson road ¾ of a pole S. 70½ W. from a black oak with a pointer blaze, corner to said Stine's land and the land of Samuel Lipes at — poles and with the latter to a black oak with upward chops and thence N. 79¾ E. 90 poles passing 3 white oaks at about 6¼ poles to the beginning.

And the said Samuel Lipes, Executor as aforesaid, doth covenant with the said W. A. Glasgow, Executor of Charles C. Spears, that he will execute such further assurances
32 of title as may be requisite or necessary and that he will warrant generally the property hereby conveyed.

Witness the following signature and seal.

SAMUEL LIPSE, [SEAL,]
Executor of Moses Lipse, deceased.

BOTETOURT County, TO-WIT:

I, Joseph V. Carper a justice of the peace for the county aforesaid, in the State of Virginia, do certify, that Samuel Lipse, whose name is signed to the writing above, bearing date on the 7th day of April, 1863, has acknowledged the same before me in my county aforesaid.

Given under my hand, this 13th day of April, 1863.

JOSEPH V. CARPER, J. P.

BOTETOURT COUNTY CLERK'S OFFICE, 13TH OF APRIL, 1863:

This deed, with the certificate thereon written, was this day acknowledgment exhibited in said office and admitted to record.

Teste: F. WOLTZ, Cl'k.

A copy—teste: T. H. ALLEN, D. C.

Exhibit G, filed with O Bill.

33 This deed, made the 7th day of April, in the year 1863, between W. A. Glasgow, Executor of Charles C. Spears, deceased, of the first part, and Wm. A. McCue, of the second part,

Witnesseth, That in consideration of fifteen thousand dol-

lars, three thousand thereof in hand paid, and twelve thousand, the residue thereof, secured to be paid according to written contract between the said parties of date February 11, 1863, and of a deed of trust executed by the said McCue simultaneously with these presents, the said Glasgow, Executor of Charles C. Spears, doth grant, with special warranty, unto the said Wm. A. McCue a certain tract or parcel of land conveyed to the said Glasgow, Executor, &c., by deed of this date, by Samuel Lipes, Executor of Moses Lipes, deceased, containing three hundred and ninety-one acres, and bounded as follows, to-wit: Beginning at a white oak on a line of Samuel Lipes' land, corner to the land of Waskey and Switzer, and with the latter S. 16 E. 401 poles, crossing the ridge road at 88 poles, the McAdamized road at 187 poles, Mill Canal at 190 poles, and Mill Creek to a stake on a line of Lackland's heirs' land between two white oaks and white oak stump, thence with said heirs S. 89¾ W. 90 poles to a hickory black oak and white oak on top of a hill, corner to the 8 acre survey, and including the same S. 1¼ W. 18¾ poles to between a poplar and white oak N. 85 W. 94 poles to two white oaks marked by chopping upwards, at a fallen red oak and pine N. 66¾ E. 32 poles, to two white oaks, a red oak and gum on a hillside, thence with the land of John M. Robinson's heirs N 19 W. 132 poles
34 to a stake on the south bank of Lo y's Mill Creek N. 16 W. 284 poles, crossing the Creek and McAdamized road at 34 poles to a post oak tree and two gums and a white oak sapling with pointer blazes, thence with —— *Stornes'* land S. 72½ E. 48½ poles to a large white oak tree S. 67⅞ E. 34¾ poles, passing a stake in the Jackson road ¾ of a pole S. 70½ W. from a black oak with a pointer blaze corner to Stine and Samuel Lipes' at — poles, and with the latter to a black oak with upward chops and thence N. 79¾ E. 90 poles, passing 3 white oaks at about 6¼ poles to the beginning. Situate on Mill Creek, in the County of Botetourt.

Witness the following signature and seal.

W. A. GLASGOW, [SEAL.]
Executor of C. C. Spears, deceased.

BOTETOURT COUNTY, TO-WIT:

I, Samuel M. Carper, a Justice of the Peace for the County aforesaid, in the State of Virginia, do certify that W. A. Glasgow, whose name is signed to the writing above, bearing date on the 7th day of April, 1863, has acknowledged the same before me in my County aforesaid.

Given under my hand this 13th day of April, 1863.

SAMUEL M. CARPER, J. P.

BOTETOURT COUNTY COURT CLERK'S OFFICE, 13TH APRIL, 1863:

This deed, with the certificate of acknowledgment thereon written, was this day exhibited in said office and admitted to record.

Teste: F. WOLTZ, Clerk.

A copy from the record—teste:

B. M. ALLEN, Clerk.

Exhibit H, filed with O Bill.

This deed, made the 7th day of April, 1863, Wm. A.
35 McCue of the first part, Wm. McCreery of the second part, and W. A. Glasgow, Executor of Charles C. Spears, deceased, of the third part,

Witnesseth, That said Wm. A. McCue doth grant unto the said Wm. McCreery a certain tract or parcel of land containing three hundred and ninety-one acres, situate in Botetourt County, Virginia, on both sides of Loony's or Mill Creek and the Southwestern Turnpike road, particularly described in a deed of this date executed by the said Glasgow, Executor, to the said McCue,

IN TRUST, to secure to W. A. Glasgow, Executor of Charles C. Spears, deceased, his successor or successors as such, the payment on the 18th day of August, eighteen hundred and eighty-two (1882), of the sum of twelve thousand dollars in gold coin of the value of the alloy of the United States of America in the year 1861, and also the interest thereon at the rate of six per cent. per annum, payable on the 1st day of January, 1864, and annually thereafter in such funds as may be current in the State of Virginia, or in merchantable corn and flour at two dollars per bushel for corn and fifteen dollars per barrel for flour, as the said Glasgow, Executor, and his successor or successors may from time to time elect to receive it, or in gold coin or its equivalent if the said McCue prefer to pay the interest in such medium. And if the said McCue shall at any time be in default in payment of the interest aforesaid, or of the principal or of any part thereof, the said
36 McCreery shall at the instance of the said Glasgow, Executor, his successor or successors, having first given reasonable notice of the time and place of sale by advertisement in some neighboring newspaper for at least four successive weeks, and by posting at the front of the Court-house of the County aforesaid, proceed to sell the land aforesaid on such terms as will best secure the payment of the interest and principal in time and manner of payment above mentioned.

It is further covenanted that the said McCue is to have undisturbed possession of the lands aforesaid until he make

default in the payment of interest or principal as above stipulated, and the said McCue covenants on his part that the lands shall be used in a farmer-like manner, at least one-third thereof to remain in timber while the debt aforesaid remains a charge thereon.

Witness the following signatures and seals:

WM. A. McCUE, [SEAL.]
(Stamp $15.) W. A. GLASGOW, Ex'or, [SEAL.]
WM. McCREERY, [SEAL.]

BOTETOURT COUNTY, TO-WIT:

I, Samuel M. Carper, a Justice of the Peace for the County aforesaid, in the State of Virginia, do certify that W. A. McCue, W. A. Glasgow and Wm. McCreery, whose names are signed to the foregoing writing, bearing date on the 7th day of April, 1863, have each acknowledged the same before me in my County aforesaid.

37 Given under my hand this 13th day of April, 1863.

SAMUEL M. CARPER, J. P.

BOTETOURT COUNTY CLERK'S OFFICE, APRIL 13TH, 1863.

This deed, with the certificate of acknowledgment thereon written, was this day exhibited in said office and admitted to record.

Teste: F. WOLTZ, Clerk.
A copy—teste: T. H. ALLEN, D. C.

Exhibit I.

This deed, made the 2d day of November, in the year 1863, between Wm. A. McCue and Mary F. McCue his wife, of the first part, and Joseph F. Robinson and Madison McCullock of the second part of the second part,

Witnesseth, That in consideration of Twenty-Three Thousand, Five Hundred Dollars—eleven thousand, five hundred thereof in hand paid and twelve thousand (the residue thereof) secured to be paid according to the terms of a deed of trust, executed by the said Robinson & McCullock, simultaneously with these presents, the said McCue and wife do grant with general warranty unto the said Robinson & McCullock jointly a certain tract or parcel of land conveyed to the said McCue by Wm. A. Glasgow, Executor of C. C. Spears, dec'd, by deed of date April 7th, 1863, containing 391 acres and bounded as follows, to-wit: Beginning at a white oak on a line of

38 Samuel Lipes' land corner to the lands of Waskey & Switzer, and with the latter S. 16 E. 401 poles, crossing the ridge road at 88 poles, the M'Adamized road at 187 poles,

Mill Canal at 190 poles and Mill Creek to a stake on a line of Lackland's heirs land, below 2 white oaks and a white oak stump, thence with said heirs S. 89¾ W. 90 poles to a hickory, black oak and white oak on top of a hill corner to the 8 acre survey and including the same S. 1¼ W. 18¾ poles to between a poplar and white oak N. 85 W. 94 poles to 2 white oaks marked by chopping upwards at a fallen red oak and pine N. 66¾ E. 32 poles to 2 white oaks, a red oak and gum on a hillside, thence with the lands of John M. Robinson's heirs N. 19 W. 132 poles to a stake on the south bank of Loony's Mill Creek N. 16 W. 284 poles, crossing the creek and the M'Adamized road at 34 poles to a post oak tree and 2 gums and a white oak sapling with pointer blazes, thence with —— Stine's land S. 72½ E. 48½ poles to a large white oak, S. 67⅞ E. 34¾ poles passing a stake in the Jackson road ¾ of a pole S. 70½ W. from a black oak with a pointer blaze, corner to Stine and Samuel Lipes at —— poles and with the latter to a black oak with upward chops, and thence N. 79¾ E. 90 poles passing 3 white oaks at about 6¼ poles to the beginning—situate on Mill Creek, in the County of Botetourt.

WM. A. McCUE, [SEAL.]
M. F. McCUE, [SEAL.]

STATE OF VIRGINIA, BOTETOURT COUNTY, TO-WIT:

I, Wm. K. McDowell, a notary public in and for the
39 county and State aforesaid, do certify, Wm. A. McCue, whose name is signed to the writing above, bearing date on the 2d day of November, 1863, has acknowledged the same before me in my county aforesaid, I also certify that M. F. McCue, the wife of Wm. A. McCue, whose names are signed to the writing above, bearing date on the 2d of November, 1863, personally appeared before me in my county aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said M. F. McCue, acknowledged the said writing to be her act and deed, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 2d day of November, 1863.

WM. K. McDOWELL, N. P.

BOTEOURT COUNTY COURT CLERK'S OFFICE, 2d November, 1863.

This deed, with the certificate of acknowledgement thereon written, was this day exhibited in said office and admitted to record.

Teste: F. WOLTZ, Cl'k.
A copy—teste: T. H. ALLEN, D. C.

Exhibit K.

This deed, made the 2d day of November, 1863, between Joseph F. Robinson and Madison McCullock, of the first part, Wm. A. McCue, of the second part, and Robert K. Godwin, of the third part,

Witnesseth, That the said Robinson and McCullock
40 do grant unto the said Godwin a certain tract of land, containing 391 acres, situate in Botetourt County, Virginia, on both sides of Loony's or Mill Creek and the southwestern turnpike road, particularly described in a deed of this date executed by the said McCue and wife to the said Robinson and McCue.

IN TRUST, to secure to W. A. McCue, his representatives or assigns, the payment, on the 18th day of August, eighteen hundred and eighty-two (1882), of the sum of twelve thousand dollars in gold coin, of the value of the alloy of the United States of America, in the year 1861, and also the interest thereon at the rate of six per cent. per annum, payable on the 1st day of January, 1864, and annually thereafter, in such funds as may be current in the State of Virginia or in merchantable corn and flour, at two dollars per bushel for corn and fifteen dollars per bushel for flour, as the said McCue, his representatives or assigns may from time to time elect to receive it, or in gold coin or its equivalent, if the said Robinson and McCullock prefer to pay the interest in such medium. And if the said Robinson and McCullock shall at any time be in default in payment of the interest aforesaid, or of the principal or of any part thereof, the said Godwin shall, at the instance of the said McCue, having first given reasonable notice of the time and place of sale by advertisement in some neighboring newspaper for at least four successive weeks, and by posting at the front
of the Courthouse of the County aforesaid, proceed to
41 sell the land aforesaid on such terms as will best secure the payment of the interest and principal in time and manner of payment above mentioned. It is further covenanted that the said Robinson and McCullock are to have undisturbed possession of the lands aforesaid until they make default in payment of interest or principal as above stipulated, and the said Robinson and McCullock covenant on their part that the lands shall be used in a farmer-like manner, at least one-third thereof to remain in timber while the debt aforesaid remains a charge thereon.

Witness the following signatures and seals.

JOS. F. ROBINSON, [SEAL.]
MADISON McCULLOCK, [SEAL.]
ROBERT K. GODWIN, [SEAL.]

I assign the within and foregoing contract to W. A. Glasgow, Executor of C. C. Spears, deceased, as collateral security for the performance of my obligation to him in a deed of trust of date the 7th day of April, 1863, executed by me to Wm. McCreery, trustee for the benefit of said Glasgow, Executor, said deed of trust being of record in Botetourt County Court Clerk's office.

Witness my hand and seal, this 2d day of November, 1863.

WM. A. McCUE, [SEAL.]

BOTETOURT COUNTY COURT CLERK'S OFFICE,
2d of November, 1863.

This deed of trust was this day exhibited in said office and acknowledged by the parties thereto and admitted to record.

Teste: F. WOLTZ, Clerk.

42 A copy—teste: T. H. ALLEN, D. C.

[Exhibit L, referred to in the foregoing Bill, cannot be found among the papers of this cause.—F. W. RIVES, Clerk.]

And at another day, to-wit: At Rules held in the Clerk's Office of the said Circuit Court, on the first Monday in February, 1879, being the 3d day of the month, on the motion of the Plaintiffs, by their Attorneys, F. W. Rives is assigned guardian *ad litem* to the infant Defendants named in their said bill, to defend them in this suit. Whereupon came the said F. W. Rives, guardian *ad litem* as aforesaid, and filed his answer to the Plaintiffs' bill; which answer is in the words and figures following, to-wit:

To the Honorable Hugh L. Bond, Judge of the Circuit Court of the United States, for the Western District of Virginia:

The answer of Anna V. Lipse, Charles Lipse, Bowyer Lipse, Mary Lipse, Caroline Lipse, and Eugene Lipse, infants under the age of twenty-one years, by F. W. Rives, their guardian *ad litem*, to a bill of complaint exhibited against them and others by David H. Lipse, in his own right and as the
43 surviving Executor of Moses Lipse, deceased, and others.

The Respondents for answer unto the said Bill say that they are infants of tender years, and not presumed to know their rights in the premises; and so neither admitting nor denying any of the allegations of the said Bill, they submit the same to the care, protection and sound discretion of the Court.

And having answered, they pray to be hence dismissed, &c.

ANNA V. LIPSE,
CHARLES LIPSE,
BOWYER LIPSE,
MARY LIPSE,
CAROLINE LIPSE,
EUGENE LIPSE.

By F. W. RIVES, their guardian *ad litem*.

And this suit having regularly matured at the Rules, the same is set down for hearing.

And at another day, to-wit: At a regular term of the Circuit Court of the United States of America, for the Western District of Virginia, held at the Court-room thereof in the city of Lynchburg, on Tuesday, the 30th day of September, A. D. 1879.

On motion of the Defendant, William A. Glasgow, Ex-
44 ecutor of C. C. Spears, deceased, has leave to file his answer to the Complainants' Bill, and the same is accordingly filed.

On motion of the Defendants, Levi Huff and Catharine his wife, Barbara Brownlee, John W. Lipse, Oscar Lipse, Rebecca E. Leffel, Ferdinand Leffel, Dyce Ann Reynolds, Luther Reynolds, Samuel M. Lipse, Martha J. Houseman, Samuel Houseman, John M. Lipse, Wm. L. Lipse, Rebecca Allen, John B. Allen, Margaret Lipse, Danville Kessler, Peter Kessler, Christopher Lipse, Franciso Lipse, Taylor Lipse, Harvey D. Lipse, Esther Lipse, Samuel H. Lipse, Virginia C. Showalter, Chas. T. Lipse, Samuel Showalter, Lewis T. Custer, Christopher Custer, Joel G. Custer, M. Lollis, W. E. Lollis, Ellen Neighbors, J. Neighbors, A. Smith, B. Smith, C. Smith, D. Smith, Jeff Smith, Henry Lipse, Samuel Lipse, Rebecca Watkins, Moses Watkins, and Catharine Lipse, they have leave to file their joint answer to the Complainants' Bill, which joint answer is accordingly filed. And the Defendants last mentioned move the Court for leave to file their cross-bill against their Co-defendants, the said William A. Glasgow, Executor of C. C. Spears, deceased, Sallie Moore Spears, —— Lewis and Sallie his wife, Madison McCullock, and William A. McCue, which leave the Court grants, and the cross-bill is accordingly filed.

F. W. Rives, who has heretofore been appointed guardian
ad litem for the infant Defendants, Anna V. Lipse,
45 Charles Lipse, Mary Lipse, Caroline Lipse, and Eugene Lipse, filed his answer as such guardian *ad litem* to the Complainants' Bill. And this cause is continued until the next term.

The following is a copy of the answer of William A. Glas-

gow, Executor of Charles C. Spears, together with the exhibits therewith filed, referred to in the foregoing decree:

The answer of William A. Glasgow, Executor of Charles C. Spears, deceased, to a Bill of Complaint exhibited against him and others in the Circuit Court of the United States, for the Western District of Virginia, by David H. Lipse and others.

This Respondent, not waiving any exceptions which can or may be taken to the said Bill for its many errors and misstatements of law and fact, for answer to so much of said Bill as he is advised it is material for him to answer unto, says: It is true that Moses Lipse died in the County of Botetourt, Virginia, about the time stated in said Bill, seized and possessed of considerable real and personal estate; that by his last will and testament Samuel and David Lipse were appointed his Executors, and that they qualified as such in the County Court of said County. Respondent does not know, but presumes it true that the said Moses left twelve children, all of whom survive him, and who were legatees under his will, and that all of them except David H. Lipse, Moses Lipse, Barbara Brownlee and Catharine Huff had died before the commencement
46 of this suit. Respondent does not know or admit that the heirs at law or distributees of such of the children of Moses Lipse as have died are correctly stated in said Bill, nor does he admit the residences of said parties to be correctly stated in said Bill. He admits that the Executors of Moses Lipse, deceased, sold the land referred to in said Bill to Charles C. Spears in his life time. The sale was made on the 10th day of September, 1860, by a written contract under seal, which said original contract, marked "L S," is herewith filed as part of this answer. The sale was for the price stated in said Bill, but the deferred installments did not bear interest as alleged; and the said Spears gave his bonds for the deferred installments.

It is not true that the cash payment was made in "gold coin," nor is it true that the contract called in terms for "gold coin" in payment of the deferred installments; the said payment was made in the common bank currency of the State, and the deferred installments were solvable in any currency or money that the creditor might agree to receive therefor. The assertions that not one dollar of the deferred installments aforesaid has been paid by said Spears in his lifetime, or by any one for him, is wholly untrue. It is true that said C. C. Spears died on the 2d day of September, 1862, having been killed in battle on that day. He left to survive him his wife and one daughter, who was one year old at the time of

47 his death. By his last will Respondent was appointed his Executor, and duly qualified as such.

Respondent does not admit that the Complainants were all "loyall citizens of the United States during the Rebellion." On the contrary he believes that most of them were within the limits of the Confederate States, and in communication with the said Samuel Lipse, who was the acting Executor of said estate, and that they approved of his conduct of the administration and actually received their portions of the entire estate.

Further answering, Respondent most positively denies that in person or by others he contrived any plan to obtain a conveyance to himself, as Executor, of the said tract of land. Nor is it true that Respondent was acquainted with all the parties interested in the said estate, or with any considerable number of them, or with their circumstances. Nor is it true that Respondent, fortified with an Act of Assembly, passed March 5th, 1863, by the Legislature of Virginia, and with enactments for sequestrating the property of alien enemies, and loaded with Confederate notes, sought the resident Executor of Moses Lipes, deceased, and proposed or insisted that he should receive Confederate currency in payment of the purchase money. This statement of said Bill is false in every particular. Respondent, further answering the indistinct statements made in this regard, says it is not true that Samuel Lipse, Exec-

48 utor, refused to receive Confederate currency or disavowed his right to do so, or claimed that the debt was payable in lawful money of the United States, and that he would receive none other; nor did he say that neither he nor the resident legatees were unwilling to receive Confederate currency in payment for said land. Nor is it true that Respondent represented then to said Executor that said "Act" had been passed to meet the case, or that the Respondent in any way or by any means environed the resident Executor with a net of circumstances which were designed or were sufficient to control that perfect freedom of will and action which he was entitled to exercise. Respondent did offer payment to said Lipse, Executor, as he was advised it was his duty to do, but he made no threats, was in no position to make or to enforce threats, and was in no sense his counsel or adviser. In all these matters the said Samuel Lipse, who was a man of good intelligence, and of more than ordinary decission of character, acted out his own purpose and will, and upon the advice of his own professional counsel, and of the Commissioner of Accounts, J. T. Logan (himself an intelligent lawyer), with whom Respondent believes he counselled respecting his admin-

istration. Respondent also believes that he, in all important matters, took the counsel of his near neighbor John T. Anderson, an experienced lawyer, who the Executors appear to have retained as their counsel in settling up the will and in making sale of the land, who, Respondent believes, he
49 consulted as to all important matters connected with the winding up of the estate, including the collection of the assets. The only time said Samuel Lipse ever mentioned to Respondent any question or difficulty in regard to the currency received by him for this estate was some time after Respondent had settled with him and paid the last payment on the land.

Further answering, Respondent says that the deferred installments on the land were paid, not in 1863, as alleged by the Complainants, but about the times they respectively became due, as appears by the settled accounts of the said Executors, hereinafter referred to. The first installment was paid by Spears in his lifetime, and the last by Respondent, his Executor, in October, 1862. The last payment Respondent believes was by a check on the Farmers' Bank of Fincastle. It was made on the 23d day of October, 1862, just 20 days after it fell due, and it was received by Samuel Lipse, Executor, without question or objection, that Respondent remembers; he then acknowledged payment of the bond, and it is on file in the County Court of said County with the settlements of the accounts of Respondent as Executor of Spears, and it will be produced and filed here if necessary.

That Samuel Lipse, Executor, had the undoubted right to receive all said payments Respondent never questioned. He indignantly denies all imputations of artifice or fraud on his part, and affirms that he acted in the simple discharge
50 of his duty. Respondent did not call for a conveyance for nearly six months after making the last payment.

In the Spring of 1863, as Executor of Spears, he sold the tract of land to W. A. McCue, as averred in said Bill. Respondent's attention was then called to the Act of Assembly of March 5th, 1863, referred to by Complainants. Respondent does not admit that said Samuel, as Executor, could not have lawfully conveyed the said land independent of the said Act. He then requested of the said Samuel conveyance of the title, and he readily consented to execute it. It is very probable that Respondent stated to said Samuel that this Act applied just to this case, but it is not true that he told him it had been passed to meet this case, for such was not true, as this Respondent had nothing to do with its passage. The said Deed, as will be seen by inspection of it, was made the 7th April, 1863,

and acknowledged by him April 13th, 1863, and then recorded. It was executed and acknowledged by the said Samuel in the absence of this Respondent, of his own free will and on his own independent judgment. It thus appears that the whole statements of the Bill that Respondent paid this purchase money in 1863, and that said payments were made long after the installments had become due, and were made in order to control said conveyance, are wholly untrue.

Respondent further answers and pleads, in absolute bar of any recovery by the Complainants upon their said Bill, that the said Executors of Moses Lipse did, in the Fall of
51 1864, file before James T. Logan, Commissioner of Accounts for the County Court of Botetourt, the Court which, by the laws of Virginia, had complete jurisdiction of all such matters, a full, exhaustive and final statement of all their receipts, disbursements and distribution of the whole estate of the said Moses Lipse, deceased; that said account was regularly stated by said Logan, Commissioner, and by him, on the 12th day of October, 1864, returned to said County Court of Botetourt County, and that after said account and report had remained for more than thirty days for exceptions, it was by said County Court, on the 14th day of November, 1864, regularly approved and confirmed and ordered to be recorded, which was done. All which will fully appear from a true and correct copy of said account and record, which is herewith filed as a part of this answer, marked "S and D L."

From said record it appears that Samuel and David Lipse, Executors of Moses Lipse, deceased, have received and charged themselves, as Executors, with all the assets of said estate, including the whole purchase money for said land, and that they claim to have disbursed and paid out the whole of the assets. Whether said disbursements have been properly and legally made does not concern this Respondent. And he admits that the said Executors, only, are answerable therefor, and that the Complainants, and especially David Lipse, are estopped from demanding any part of said purchase money from
52 this Respondent. Respondent is advised that said settlement is final and conclusive of all matters embraced therein, until the same, by regular proceedings, be surcharged and falsified, and that as this suit does not seek to surcharge and falsify said account and report the same cannot be maintained.

The Court will see on examination of said account and report that most of the legatees of Moses Lipse, deceased, including a number of the Complainants, have actually been paid their shares of the said estate, and their receipts filed and recorded,

thus manifesting their approval of the conduct and settlement of the Executors, alike during its progress and after final settlement. It also appears that the Executor, Samuel, not only collected the land payments, but that he was diligent in making collection of all other assets of the estate, and that he took to his account bonds due his Testator in his lifetime, payable in *ante bellum* currency, to the amount of $885.65, showing that at a much later date than that at which Respondent made the final payment on the land the said Samuel treated the liabilities to his Testator's estate as solvable in Confederate money, and showing, also, his desire to close up the estate without awaiting the return of peace, and an improved medium of payment.

In closing his answer Respondent deems it proper to call attention to the fact that this suit was not instituted until the present year, 1879, after death had sealed the lips of the said Samuel, with whom Respondent had all his transac-
53 tions. During the lifetime of the said Samuel, perhaps five years ago, the said David H. was in Botetourt County. He appeared to be visiting his brother, Samuel, and other friends. At that time he mentioned to this Respondent that he was thinking of a suit against Spears' estate for his interest in the land money. He remained in the County, as Respondent remembers, for several weeks, and before leaving he informed Respondent that it appeared, from the best information he could get, that his claim would go against his brother Samuel, and that he would not trouble him; and added, if he could maintain a claim against Spears' estate that he would not hesitate to bring suit.

He has postponed action until after Samuel's death, and Respondent deems it no violent presumption that the delay to bring the suit is owing to his apprehensions that the evidence of Samuel would have availed to defeat his claim. And Respondent believes it would.

Respondent, again denying any allegation of said Bill which in any degree whatever imputes fraud, force or artifice to him, or unfairness in his transactions referred to, and having fully answered, prays to be hence dismissed with his costs, &c.

W. A. GLASGOW,
Executor of C. C. Spears, deceased.

STATE OF VIRGINIA, COUNTY OF BOTETOURT, TO-WIT:

W. A. Glasgow this day appeared before the under-
54 signed, F. H. Mays, a Commissioner of the United States for the Western District of Virginia, and being duly sworn, says that the matters contained in the within

answer, as stated on his own knowledge, are true, and as stated on the information of others he belives them to be true.

Given under my hand this 22d day of September, 1879.

F. H. MAYS, Commissioner. H.S.

Exhibit L and S, filed with Answer.

Memorandum of an agreement made and entered into this 10th day of September, 1860, between Samuel and David H. Lipes, Executors of Moses Lipes (Libes), deceased, of the first part, and Charles C. Spears of the second part,

Witnesseth, That the said Executors have this day bargained and sold unto the said Charles C. Spears a tract of land on which the said Moses Lipes lately resided, and of which he died seized, lying on Mill Creek, in the County of Botetourt, containing by the title papers three hundred and seventy-one acres, for which the said Spears agrees to pay thirty-eight dollars per acre, as the quantity shall be ascertained by an actual survey to be made by the Surveyor of Botetourt County, at the cost of the said Executors; one-third of which is to be paid on the 3d day of October next, and the balance in two equal annual payments on the 3d of Octobbr, 1861 and 1862, without interest. The said Spears is to have immediate
55 possession of that part of said tract which lies on the northwest side of the McAdamized road, (with the privilege of seeding that part of it which is now in corn so as not to injure the same,) and the house and kitchen lately occupied by the said Moses, and the barn on the road except the stable in the west end. The said Spears is to give his bonds with personal security for the two deferred payments as soon as the survey shall be made and the quantity ascertained, and the said Executors bind themselves to give the said Spears full and complete possession of the said tract of land by next Christmas, and make to him a good title, with general warranty, for said tract of land as soon as all of the purchase money shall be paid. As witness our hands and seals the day and year first above written.

SAMUEL LIPES, [SEAL.]
DAVID H. LIPES, [SEAL.]
Executors of Moses Lipes.
C. C. SPEARS. [SEAL.]

Exhibit - S & D. L.

56 *Statement and Settlement of the Accounts of Samuel and David Leips, Executors of Moses Leips, dec'd, made before the undersigned, Commissioner of the County Court of Botetourt.*

1860.
June. Sam'l and David Leips, Ex'ors of Moses Leips, dec'd,
In account with the Estate of their Testator, Dr.

To cash in hands at Testator's death.....			$10 70
Do. check in Bank at Buchanan			71 65
1861. Sale Bill of personal property due 15th June 1861.....		1,350 56	
Deduct sale notes not yet collected, and which may prove insolvent, though, as the executors allege, without their default:			
Note on Jacob Young & Co..	$10 75		
" " Bartly Young & Co..	36 60		
" " Jacob Young & Co..	8 75		
" " Lewis K. Robeson..	6 13	62 23	
			1,288 33
To received for corn and oats sold C. C. Spears			63 60
" " " wheat sold Waskey & Switzer.			64 44
" " " corn sold Waskey & Moore..			17 12
			$1,515 84

Cr.

By Commissions 5 per cent ...		75 79	
" paid John Shafer.....No. 1		14 34	
" " James Rowland. " 2		3 00	
" " Clerk's Ticket... " 3		11 12	
" " John S. Beckner. " 4		3 00	
" " Harvey D. Leips. " 5		15 00	
" " Taxes for 1860.. " 6		44 03	
" " Amt judg't recovered v. estate by Daniel Leips... " 7		219 38	
" " Clerk's Ticket... " 8		1 40	
57 " " Patrick Dork for enclosing graveyard ..... " 9		144 00	
" " G. W. Leips.... " 10		1 00	
" " Samuel Winger.. " 11		2 97	
" " Harvey Leips.... " 12		1 00	
" " Cath. D. McCluer " 13		50	

	By paid Jno. T. Anderson	" 14	35 00		
	" " Wm. A. Glasgow	" 15	20 00		
	" " Green James....	" 16	11 50		
	" " Ch. Aunspaugh..		15 63		
			618 66		1,515 84
1861	Amounts brought forward...		$618 66		$1,515 84
	By paid J. H. Wartman & Co.....No.	18	5 00		
	By paid Richard Manzy..	" 19	6 12		
	" " Waskey & Switzer	" 20	14 98		
	" " M. McCullock...	" 21	1 00		
	" " W. D. Couch & Co.	" 22	4 53		
	" " Thomas Pribble.	" 23	1 50		
	" " Wm. & L. Linkinhoker.....	" 24	33 23		
	" " Joel Booze.....	" 25	8 72		
	" " Isaac Brewbaker.	" 26	10 00		
	" " E. N. Wood....	" 27	7 65		
	" " Ralph Schenck..	" 28	14 50		
	" " Executor's acc't..	" 29	1 94		
October	" " Balance due estate		788 01		
			1,515 84		1,515 84
	To Balance per contra.....				788 01
	Deduct for expenses for making and rendering settlement of accounts.....				15 01
					$773 00

58 The said Executors for sale of land, Dr.
391 acres sold October 3, 1860, to
Charles C. Spears, at $38.00 per acre, $14,858 00
Payable one-third cash October 3d, 1860 $4,952 66
1/3 1861 4,952 67
1/3 1862 4,952 67
$14,858 00

The Testator directs by his will that the proceeds of his estate, real and personal, when sold, shall be equally distributed amongst his twelve children, regard being had to the advancements made by him during his life time, and charged to his children in his account book. The advancements to some of the said children appear to have been considerably greater than those made to others—M. P. Boreing and wife received $1,813.45, and Philip Brownlee and wife $1,280—whilst the highest amount received by any of the remaining

ten children was $986.04. The Executors, therefore, postponed making any payments to the said Boreing and Brownlee until the others were brought up to an equality with them. The advancements to the said ten, taken from the Testator's book (between which and the charges in the will, however, there is a variance, owing probably to some error in copying at the time the will was drawn), are as follows: To D. H. Leips, $873.00; Samuel Leips, $766.57; Christopher Leips, $800; Moses Leips, $880; Daniel Leips, $950.71; Jacob Kesster, $986.14; Joseph Leips, $253.66; D. Craft, $949; John Leips, $682, and Catharine Leips, $810.

The Executor first distributed the sum of $3,959.02, being the residue of the cash payment on the land, after receiving the sum of $993.64, for the purpose of meeting the re-
59 sult of a suit brought against them by one of the legatees to recover a claim of $1,000.

Part of cash payment, October 3, 1860.....		$3,959 02
Distributed amongst the ten last named legatees on the previous page, was to equalize them, their respective advancements being brought into the account at $1,191.00.		
Daniel H. Leips' share.....	$318 00	
Samuel Leips' share.....	424 43	
Christopher Leips' share.....	391 00	
Moses Leips' share.....	311 00	
Daniel Leips' share.....	240 29	
Jacob Custer's share.....	204 96	
Joseph Leips' share.....	937 34	
D. Craft's share.....	244 00	
John Leips' share.....	509 00	
Catharine Huff's share.....	381 00	
		3,959 02
A second distribution was made as of the 3d of October, 1861, of the second land installment...		4,952 67
Balance of first payment retained as above stated to meet result of suit now brought with the account, the judgment recovered against the Executors in said suit having been credited in the settlement of the personal fund.....		993 64
Also, this amount from personal assets.....		488 69
Am't distributed 3d October, '61, amongst eleven.		6,435 00
Philip Brownlee being now permitted to participate so as to make the said eleven equal at $1,784.01.		

To D. H. Leips	$593 09		
To Samuel Leips	593 09		
60 " Christopher Leips	593 09		
" Moses Leips	593 09		
To Daniel Leips	593 09		
" Jacob Custer	593 09		
" Joseph Leips	593 09		
" D. Craft	593 09		
" John Leips	593 09		
" Levi Huff	593 09		
" Philip Brownlee	504 10		
		6,435	00
Amount for 3d distribution; Oct. 3, 1862, 3d and last payment on land		4,952	67
Balance of $773.00 due on personal fund, $488.09 thereof having been included in 2d distribution,		284	31
Amount		$5,236	98
Subject to a deduction of commissions on the sale of the land, the Executors having deferred retaining their commissions until the last payment fell due; commissions, 5 per cent. on $14,858, amount sale of land		742	90
		$4,494	08
Balance for distribution amongst the twelve legatees, M. P. Boreing and wife now coming in to participate, so as to make them all equal at $2,161.14.			
To D. H. Leips		376	95
" Samuel Leips		376	95
" Christopher Leips		376	95
" Moses Leips		376	95
" Daniel Leips		376	95
" Jacob Custer		376	95
" Joseph Leips		376	95
" D. Craft		376	95
To John Leips		376	95
61 " Levi Huff		376	95
" Philip Brownlee		376	95
To M. P. Boreing		347	63
		$4,494	08

The foregoing account embraces a statement and distribution of the whole of Testator's estate, real and personal, except some bonds which are described in the inventory recorded in

the Clerk's Office, but which are as yet uncollected. These bonds the Executor, Samuel Leips, has concluded to take at his own risk, and account for and distribute at once. Said bonds are as follows:

Bond on G. W. Wilson, due Nov. 30, 1846.....		$	130 00
Interest to 30 Nov. '49.....			23 00
		$	153 00
Cr. by G. W. Wilson's account.....			30 00
		$	123 00
Interest to 1 March, 1863.....			98 10
		$	221 10
Do. on John Shafer, March 29, '56.....$100 00			
Interest to 1 March, '63..... 41 50			
$141 50			
Cr. by this sum April 1, 59....$12 09			
Interest to 1 March, '63..... 2 11			
14 20			
			127 30
Do. on Levi Huff, 20 July, '57, without interest..			50 00
Do. on J. R. Linkons, 28 March, '57.....$ 16 50			
Cr. April 5..... 12 00			
$ 4 50			
Interest to 1 March, '63..... 1 58			
			6 08
		$	404 48
1863—To amount brought forward.....			404 48
To bond on W. T. Hardy, 23 Dec., '53...$174 00			
Interest to 21 Feb., '57..... 33 00			
$207 00			
Cr. for..... 50 00			
$157 00			
Interest to 1 March, '63..... 56 75			
			213 75
62 To Bon on H. Booze $8.25, W. Booze $58, L. U. Mays $26.60, S. Obenchain $18.25 and C. T. Beale $68.50—all due 16th Aug., '56.. 179 60			
To Int. to 1 March, '62..... 70 49			
			250 09

Bond on J. Pribble, 16 Aug., '56....	$ 40 12	
Int. to 20 Nov., '56.....	62	
	40 74	
Cr. by.....	19 30	
	21 44	
Int. to 31 Dec., '57.....	1 42	
	22 86	
Cr. by.....	13 00	
	9 86	
Int. to March 1st, '63.....	3 05	
		12 91
" Account on G. W. Leips.....		4 38
Off Commission.....	$44 28	$885 61
" Expenses of deed for land sold...	5 00	
" Do. settlement and contingencies.....	15 00	64 28
		$821 33
Balance for equal division among the twelve legatees—Each share is....		$68 44
D. H. Leips.....	68 44	
Samuel Leips.....	68 44	
Christopher Leips.....	68 44	
Moses Leips.....	68 44	
Daniel Leips.....	68 44	
Jacob Custer.....	68 44	
Joseph Leips.....	68 44	
D. Craft.....	68 44	
John Leibs.....	68 44	
Levi Huff.....	68 44	
Philip Brownlee.....	68 44	
M. P. Boreing.....	68 44	
Fractional balance.....	05	
		$821 33

Receipts evidencing the payments made by the Executors upon the several distributions stated in the foregoing
63 account are filed with the vouchers herewith returned.

J. T. LOGAN, Commissioner.

IN THE CLERK'S OFFICE OF THE COUNTY COURT OF BOTETOURT, October 12th, 1864.

This report of the settlement of the accounts of Samuel and David Leips, Executors of Moses Leibs, dec'd, made by James T. Logan, one of the Commissioners of this Court, was this day filed in the office aforesaid by the said Commissioner.

Teste: W. M. LACKLAND, Clerk.

And at a Court held for Botetourt County, at the Court House, on Monday, the 14th day of November, 1864, the said report having been filed in the Office of this Court more than one month since, and there being no exceptions thereto, the same is confirmed and ordered to be recorded.

A copy—teste: WM. M. LACKLAND, Cl'k.

The following are copies of the receipts referred to in the foregoing settlement, viz:

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred and Eighty-five Dollars, being a part of our interest in our father estate. Giving under our hands this 3d of November, 1862.

Atteste: DAVID CRAFT,
JOHN RANKIN. MARY ⋈ CRAFT.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-eight Dollars and 44 cts, in full of all my interest in my father estate. Giving under my hand July 10th, 1863.

64

MARY CRAFT, X.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred and Eighty Dollars, it being part of my interest in the second division of my fathers estate, I being a legatee of said estate this 7th day of November, 1861.

DAVID CRAFT,
Attest: her
SAMUEL LANE, Esq. MARY ⋈ CRAFT.
WM. T. WHITE. mark

Received of Samuel Leips and David Leips, adm'rs of Moses Leips, dec'd, Two Hundred and Forty-two Dollars of my father's estate, this — day of October 20, 1860.

her
MARY ⋈ CRAFT.
mark
March 30th, 1862.

Received of Samuel *Lips*, Executor of Moses Lipes, dec'd, Two Hundred and Five Dollars, it being a part of my interest in my father estate.

Giv*ing* under my hand March 30th, 1862.

MARY CRAFT, X.
WILLIAM LEIPS, Witness.

Received of Samuel and David H. Lipes *of* Moses Lipes Eighty-one Dollars, it being a part of my interest in my father estate. Given under my hand October 21st, 1860.

LEVI HUFF.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Two Hundred and Five Dollars, it being a part of our
65 interest in our father estate.

Given under our hands this 9th day of March, 1862.

LEVI HUFF.
KATHARINE HUFF.

Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, Fifty Dollars, it being a part of my father estate. October thirteen, 1860. LEVI HUFF.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred Eighty-four Dollars and Ninety-five Cents, it being a part of our interest in our father's estate. Giv*ing* under our hands 28 day November, 1862.

KATHARINE HUFF.
LEVI HUFF.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-eight Dollars and 44 cts. In full of all my interest in my father estate. Giv*ing* under my hand July 15th, 1863.

LEVI HUFF.
KATHARINE HUFF.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred and Eighty Dollars. It being a part of our estate in our father estate. Giv*ing* under our hands November 5th, 1861.

LEVI HUFF.
CATHARINE HUFF.

$200.—Received of Samuel Lipes, Executor of Moses Lipes, deceased, Two Hundred Dollars of my interest as one of the distributees of the said estate. Given under my hand this 15 day of October, 1860. LEVI HUFF.

$156.22.—Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, One Hundred and Fifty-six
66 Dollars and Twenty-two Cents. It being a part of my interest in my grandfather estate.
Given under my hand February 15th 1861.
JOSEPH LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, One Hundred and Fifty-eight Dollars and Forty-three Cents, in full of our interest in our father estate.
Given under our hands February 15th, 1864.
JACOB CUSTER,
SUSANNAH CUSTER.

Received of Samuel Lipes, Executor of *Nov.* 3, 1862, Moses Lipes, dec'd, Five Hundred Dollars, it being a part of my interest in our father estate. Given under our hand.
JACOB CUSTER,
SUSANNAH CUSTER.

Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, Three Hundred and Eighty Dollars, being a part of our interest in our father estate. Witness our hands, &c.
JACOB CUSTER,
November 2d, 1861. SUSANNAH CUSTER.

Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, Two Hundred and Four 96 cts. It being a part of my interest in my father's estate. Given under my hand this 4th day of January, 1861.
JACOB CUSTER.
her
SUSANNAH ✕ CUSTER.
mark

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Eleven Dollars and 40 cents, in full of my interest in
67 my grandfather's estate. Given under my hand March 25th, 1864. HENRY LIPES.

$156.22.—Received of Samuel and David H. Lipes Fifty-six Dollars and Twenty-two Cents. It being a part of my interest in my grandfather estate. Giving under my hand December 8th, 1860. HENRY LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Ninety-seven Dollars and 55 cts., it being a part of my interest in my grandfather estate. Given under my hand March 10th, 1862. HENRY LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-four Dollars and Fifteen Cents, it being a part of my interest in my grandfather estate. Giving under my hand December 30th, 1862. HENRY LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Thirty-four Dollars and $\frac{50}{100}$ It being a part of my interest in my grandfather estate.

Giving under my hand this 9th day of March, 1862.
HETTIE McCLURE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-three Dollars. It being a part of my interest *of my interest* in my grandfather estate. Giving under my hand November 30th, 1861. HETTIE McCLURE.

Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, One Hundred and Fifty-six Dollars and 22 cts. It being a part of my interest in my grandfather estate.
68 Giving under my hand 14th day of November, 1860.
HETTIE McCLURE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Eleven Dollars and 44 cts., it being in full of all my interest in my grandfather estate. Given under my hand July 15, 1863. HETTIE McCLURE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-four Dollars and Fifteen Cents, it being a part of my interest in my grandfather estate.

Giving under my hand this February 8th, 1863.
HETTIE McCLURE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Thirty-four Dollars and Fifty Cents. It being a part of our interest in our grandfather estate. Giving under our hands March 9th, 1862. MARY K. LIPES.

$156.22.—Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, One Hundred and Fifty-six Dollars and Twenty-two Cents. / being a part of my interest in my grandfather estate.

Giving under my hand February first, 1861.
MARY K. LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-three Dollars. It being a part of my interest in my grandfather estate.

Giving under my hand January 4th, 1862.
MARY K. LIPES,

Received of Samuel Lipes, Executor of Moses Lipes, Eleven Dollars and 44 cts., in full of all my interest in
69 my grandfather estate.
Giving under my hand July 15th, 1863.
MARY K. LIPES.

Received of Samuel Lipes of Moses Lipes, dec'd, Sixty-four Dollars and Fifty Cents, it being a part of my interest in my grandfather estate. Giving under my hand November 28, 1862. MARY K. LIPES.

$156.—Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, One Hundred and Fifty-six Dollars. Giving under my hand October 20th, 1860.
SAMUEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Thirty-four Dollars and 50 cts. It being a part of my interest in my father estate. Given under my hand this ninth day of March, 1862. SAMUEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-three Dollars. It being a part of our interest in our grandfather estate. Giving under our hands November eleventh, 1861. SAMUEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Eleven Dollars and Forty 4 cents, in full of my interest in grandfather estate. Giving under my hand September 18th, 1863. SAMUEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-four Dollars and Fifteen Cents, it being a part of
70 my interest in my grandfather estate. Giving under my hand December 12th, 1862.
SAMUEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Thirty-four Dollars and 50 cts. It being a part of my interest in my grandfather estate. Giving under my hand this 9th day of March, 1862. MOSES WATKINS.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-three Dollars. It being a part of our interest in our grandfather estate.

Giving under our hands November eleventh, 1861.
REBECCA WATKINS,
MOSES WATKINS.

Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, One Hundred and Fifty-six Dollars. It being a part of my interest in my grandfather estate. Giving under my hand October 29th, 1860.

MOSES WATKINS.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, *Eleven* Dollars and 40 cts., it being in full of all my interest in my grandfather estate. Giving under my hand May 17th, 1860. MOSES WATKINS.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-four Dollars and Fifteen Cents, it being a part of our interest in our grandfather estate. Giving under our hands November 28th, 1862. MOSES WATKINS,
REBECCA WATKINS.

71 Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-eight Dollars and 44 cts., in full of all my interest in my father estate.

Giving under my hand June 14th, 1863.

DANIEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred and Eighty-four Dollars Ninety-five cents, it being a part of my interest in my father estate. Giving under my hand November 30th, 1862.

DANIEL LIPES.

Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, *Too* Hundred and Forty Dollars and 29 cts. It being a part of my interest *I*n my father estate. Giving under my hand December first, 1860.

DANIEL LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Two Hundred and Five Dollars, it being a part of my interest in my father's estate. Giving under my hand April 14th, 1862. DAN'L LIPES.

Rec'd as of the 3d of October, 1861, of Samuel Lipes, one of the Ex'ors of Moses Lipes, dec'd, Three Hundred and Eighty Dollars, in part of my interest in the estate of said Moses Lipes, dec'd. DAL. LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, *Too* Hundred and Five Dollars. It being a part of our interest in our father estate. Giving under our hands this 9th day of March, 1862. PHILIP BROWNLEE,
BARBARA BROWNLEE.

Received of Samuel Lipes, Executor of Moses Lipes,
72 dec'd, *Too* Hundred and Ninety-one Dollars, it being a part of our interest in our father's estate.

Giving under our hand. PHILIP BROWNLEE.
BARBARA BROWNLEE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-eight Dollars and 44 cts. It being in Full of all my Interest in our father's estate.

Giv*ing* under my hands May 27, 1863.
PHILIP BROWNLEE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred Eighty-five Dollars. It being a part of our interest in our father estate.

Giv*ing* under our hands November 28th, 1862.
PHILIP BROWNLEE,
BARBARA BROWNLEE.

Received of Samuel Lipes, acting Ex'or of Moses Lipes, dec'd, the sum of Two Thousand and Twenty-two Dollars and Twenty Cents, on account of the interest of David Lipes, Josephus Lipes, and the heirs of Christopher Lipes, dec'd, in the estate of said Moses Lipes, dec'd, which have been confiscated by a decree of the District Court of the Confederate States for the Western District in Virginia, and ordered to be paid to the undersigned. Given under my hand this 30th of March, 1864.
JOSEPH G. STEELE.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Four Hundred and Forty Dollars and Forty Cents, in full of all my entire *in* my father estate.

73 Giv*ing* under my hand September 6th, 1863.
JOHN LIPES.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Five Hundred and Eighty-five Dollars. It being a part of my interest in my father's estate.

Giv*ing* under my hand April 14th, 1862.
his
JOHN ✕ LIPES.
mark

$509.—Received of Samuel and David H. Lipes, Executors of Moses Lipes, dec'd, Five Hundred and Nine Dollars, it being a part of my interest in my father's estate.

Giv*ing* under my hand second day of November, 1860.
his
JOHN ✕ LIPES.
mark

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Sixty-eight Dollars and 44 cts., in full of all my interest in my father's estate.

Giv*ing* under my hand July 10th, 1863.

ANN R. BOREING.

Received of Samuel Lipes, Executor of Moses Lipes, dec'd, Three Hundred and Forty-seven Dollars and 63 cts., it being a part of my interest in my father estate.

Giv*ing* under our hands this 2d day of November, 1862.

M. P. BOREING,
ANN R. BOREING.

A copy—teste:

Fee, $3.90. T. H. ALLEN, D. C.

Know all men by these presents, That we, Samuel Lipes and David Lipes, Abraham Brewbaker, Newton Switzer, Philip Brownlee, John Lipes, and Jacob Carter, are
74 held and firmly bound unto the Commonwealth of Virginia in the sum of Thirty Thousand Dollars, to the payment whereof, well and truly to be made to the said Commonwealth, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 11th day of June, 1860.

The condition of the above obligation is, that if the said Samuel Lipes and David Lipes, who have qualified as Executors of Moses Lipes, dec'd, shall faithfully discharge the duties of his office or trust as Executors aforesaid, then this obligation to be void, otherwise to remain in full force.

DAVID H. LIPES, [SEAL.]
SAMUEL LIPES, [SEAL.]
NEWTON SWITZER, [SEAL.]
A. BREWBAKER, [SEAL.]
PHILIP BROWNLEE, [SEAL.]
JOHN LIPES, [SEAL.]
JACOB CARTER, [SEAL.]

VIRGINIA, BOTETOURT COUNTY, TO-WIT:

I, B. M. Allen, Clerk of the County Court for the County aforesaid, in the State of Virginia, certify that the fore-
75 going eighteen pages of writing are true transcripts from the records and files of said office.

SEAL. In testimony whereof I have hereto set my hand and affixed the seal of said Court. Done this 9th day of February, A. D. 1880.

B. M. ALLEN, Cl'k.

The following is a copy of the joint answer of Levi Huff and Catharine his wife, and others, referred to in the foregoing decree:

CIRCUIT COURT OF THE UNITED STATES,
FOR THE WESTERN DISTRICT OF VIRGINIA.

To the Judges of said Court:

The joint answer of Levi Huff and Catherine Huff (née Lipse) his wife, of Barbara Brownlee (née Lipse), widow, John W. Lipse, in his own right and as Administrator of John Lipse, dec'd, Oscar L. Lipse, Rebecca E. Leffel (née Lipse) and her husband Ferdinand Leffel, Dyce Ann Reynolds (née Lipse) and her husband Luther Reynolds, Samuel M. Lipse, Jr., Martha J. Houseman (née Lipse) and her husband Samuel Houseman, John M. Lipse, William L. Lipse, Rebecca Allen (née Lipse) and her husband John B. Allen, Margaret Lipse, Danville Kessler (née Lipse) and her husband Peter Kessler, Christopher Lipse, Francisco Lipse, Taylor Lipse, Harvey D.
76 Lipse, in his own right and as Administrator of Samuel Lipse, dec'd, Esther Lipes, widow of Samuel Lipse, dec'd, Samuel H. Lipse, Virginia C. Showalter (née Lipse) and her husband Samuel Showalter, Charles T. Lipse, Lewis T. Custer, Christopher Custer, Joel G. Custer, in his own right and as Administrator of Samuel Custer, dec'd, M. Lollis and her husband W. E. Lollis, Ellen Neighbors and her husband J. Neighbors, A. Smith, B. Smith, C. Smith, D. Smith, and Jefferson Smith, of Henry Lipse, Samuel Lipse (son of Joseph Lipse), Rebecca Watkins (née Lipse) and her husband Moses Watkins, and Catharine Lipse, Defendants.

To a bill in Chancery, filed in the said Court against them and against their co-Defendants, William A. Glasgow, Executor of C. C. Spears, deceased, Madison McCullock, Sallie Moore Spears (infant), Sallie Lewis (late widow of C. C. Spears, deceased), and —— Lewis, her husband, and others, by David H. Lipse, in his own right and as surviving Executor of Moses Lipse, deceased, William Lipse, Moses Lipse (son of Samuel), George W. Lipse, Jacob Lipse, Isaac Custer, Joseph Lipse (son of Joseph), Hetty McClure (née Lipse) and her husband William McClure, James Craft, Moses Lipse, Montgomery P. Boreing, James M. Boreing, John W. Boreing, Mary R. Hunter (née *Hunter*) and her husband *John* John C. Hunter, Ellen B. Scott (née Boreing) and her husband Daniel Scott, Susan E. Keplinger (née Boreing) and her husband James M. Keplinger, Virginia A. Keplinger (née Boreing) and her
77 husband Thomas D. Keplinger, Florena E. Boreing, David Lipse and Christopher Lipse, Complainants.

For answer to so much of the said Bill as they are advised it is necessary they should answer, these Respondents answering say that it is true, as therein alleged, that the Complainants are non-residents of the State of Virginia, and that they are residents of the Western District of Virginia; also, that Moses Lipse, late of Botetourt County, in said District, died in 1859, testate, and that the instrument referred to in the Bill as such, is his last will and testament; and also, that the Complainants, David H. Lipse and his brother Samuel M. Lipse, since deceased, qualified as his Executors; and also, that the testator left at his decease, in said County, considerable real and personal estate, which was disposed of as alleged.

These Respondents also admit that the testator left twelve living children, as alleged in the Bill, and that their names, residences, children and representatives are correctly set forth therein, including these Respondents, all of whom are descendents (except such as are the husbands of daughters or granddaughters) of the testator.

Further answering, these Respondents also admit that the real estate of the testator consisted of a tract of land situated in said County, containing 391 acres, and that the will aforesaid directed the said Executors to sell the same and divide
78 the proceeds thereof among the said children, and that on 10 September, 1860, the said Exectors did sell said land to one Charles C. Spears, in his life time, for $14,858, whereof one-third was paid 3 October, 1860, and the balance was payable in one and two years thereafter; that the said first instalment of $4952.66 was paid in the gold coin of the United States, or its equivalent, and that the second and third installments were also payable by the terms and tenor of the contract of sale, in the same money, and could not be lawfully paid in any other currency; and they also admit the truth of the allegation in the Bill contained, that not one dollar of the second and third instalments of the purchase money has ever been so *paid*, either by the said Spears, in his life time or by the Defendant William A. Glasgow, Executor of said Spears, since the latter's decease, nor by any other person, and that the whole of those instalments, legally and equatably, remains owing and unpaid, and that the estate of the said Spears, in the hands of his representatives, and the said land itself, still all remain bound in law and in justice for the payment thereof. These Respondents admit the death of C. C. Spears, leaving an infant heir and a widow, their co-Defendants, Sallie Moore Spears and Mrs. Lewis, now wife of —— Lewis, and the qualification of their co-Defendant William A. Glasgow as his Executor.

They also admit that at the time of the death of their
79 ancestor, Moses Lipse, deceased, the Complainant David H. Lipse was (as he still is) a resident of the State of Indiana, and that after coming to Botetourt County to qualify as such Executor, together with his brother, Samuel M. Lipse, who then, and until his decease in 1877, resided in said County, and qualifying as such, they (the two Executors) proceeded under the said will to sell the land directed to be sold by them, and did sell it jointly, as only it could be sold, and that after making said sale, the said David H. Lipse returned to his home before the commencement of the late war between the Confederate States (so-called), embracing the State of Virginia, and the United States, which embraced his home (Indiana), and remained there during the war, and had no part nor lot in any of the alleged transactions which occurred between Samuel M. Lipse, in his life time and Wm. A. Glasgow, Executor of C. C. Spears, deceased, whether as to the Confederate currency, which the latter sought by intimidations, &c., to induce the former to accept in lieu of the gold coin, or its equivalent, that was owing to the estate of his testator as and for the balance of the said purchase money, or whether as to the deed of conveyance of said land, which, under the compulsion of the *null* act of the pretended Legislature, passed 5 March, 1863, the former was made to execute to the latter, without the co-operation or sanction of his co-executor, and whilst these
80 Respondents admit the entire freedom of the non-resident Executor from all connexion with and complicity in the two transactions aforesaid, they take occasion here to deny that the resident executor, Samuel M. Lipse, in his life-time, ever *voluntarily* accepted Confederate Currency in the place of the Gold Coin, or its equivalent, that was (and still is) owing to the estate of his testator as balance of said purchase money, and that he ever *voluntarily* executed a deed of conveyance of said land to said Glasgow, Executor, &c., and they therefore deny all intimidations (if any such there be) in the Bill of liability on the part of the Resident Executor, for or on account of such acceptance of the Confederate currency and such execution of the conveyance for the reason that such acceptance and such conveyance were *not* the *free acts* of the Resident Executor, but were done and performed by him under duress of fear, threats and force, and under the compulsion of the circumstances which were brought to bear upon him by the Executor of C. C. Spears and others, all of which circumstances are detailed or at least alluded to in the Bill, and are correctly detailed.

And these Respondents also admit the truth of the allega-

tions in the Bill contained, that the said balance of purchase money, to-wit, $9,905.33, with its lawful interest from 3d October, 1860, which could only be lawfully discharged in the
81 legal tender money of the United States, has never been discharged, and is a lien on said land in the hands of their co-defendant, M. McCullock; that none of the Legatees of Moses Lipse, dec'd, or the representatives of those Legatees, ever received said balance, or any part of it, in such legal tender money, and never *voluntarily* received *anything* else in payment or in satisfaction of their interest and share in said balance, and that any acceptance by any of them of any Confederate currency as such payment or satisfaction was under *duress* of fear and force, and under the compulsion of the circumstances brought to bear upon them by the said Executor of Spears, and his agents, as aforesaid. These Respondents admit, also, the truth of the allegation in the Bill, that neither the Complainants nor these Respondents, nor any of them, are bound by the sole action, voluntarily or involuntarily, of the resident Executor of Moses Lipse, deceased, either in accepting Confederate currency in payment of a legal tender money debt to the Testator, or in executing the deed conveying said land to said Spears, Executor, and that both acts are *null*, because unauthorized by the will as viewed in the light of the laws which were in force at the decease of the Testator and at the time of the sale of the land, which alone were operative in the premises. These Respondents admit, also, the sale
82 of said land and the conveyance thereof by said Glasgow, as such Executor, to their co-defendant, McCue, and by him to Robinson and McCullock, also co-defendants, and by the former of his interest to the latter, who now is in possession thereof, subject to the deed of trust mentioned in the Bill, for the payment of $12,000, part of the purchase money, in *gold coin*, with interest thereon payable annually in the same, or its equivalent. And having answered the Bill as fully as they are advised it is necessary they should answer, and fully concurring in its prayers, these Respondents announce their intention to ask leave to file (and to file without delay) their Cross-Bill against their co-defendants, William A. Glasgow, Executor of C. C. Spears, deceased, and others. And they will ever pray, &c., &c.

Levi Huff, Catharine Huff, Barbara Brownlee, John W. Lipse, Oscar L. Lipse, Rebecca E. Leffel, Ferdinand Leffel, Dyce Ann Reynolds, Luther Reynolds, Sam'l M. Lipse, Jr., and the other Respondents named in the caption.

By their counsel, L. C. HANSBROUGH.

VIRGINIA—POTETOURT COUNTY, ss:

This day before me, the undersigned, a Justice of the Peace for the County aforesaid, personally appeared Barbara Brownlee, Catharine Lipes, Moses Watkins and Rebecca Watkins his wife, formerly Rebecca Lipes, parties respondents in the answer in Chancery hereto annexed and to be filed — the Circuit Court of the United States and made oath that the facts set forth in the foregoing *cros-bill* are true to their best knowledge and belief. Given under my hand the 11th day of June, 1879.

83

JACOB PETERS, J. P.

VIRGINIA—CRAIG COUNTY, ss:

This day before me the undersigned, a Justice of the Peace for the County aforesaid, personally appeared Sarah Lipes, Samuel M. Lipes, John W. Lipes, Martin L. Reynolds, Dicie Ann Reynolds his wife, *Firand* Leffel, Rebecca E. Leffel his wife, Samuel Houseman, Martha Jane Houseman his wife, and Oscar Lipes, parties Respondents in the answer in chancery hereto annexed and to be filed — the Circuit Court of the United States, and made oath that the facts set forth in the foregoing *Bill* are true to their best of their knowledge and belief.

Given under my hand the 13th day of June, 1879.

E. T. MYERS, J. P.

VIRGINIA—POTETOURT COUNTY, ss:

This day before me the undersigned, Commissioner of the Circuit Court of the U. S. for the Western District of Virginia, in said County, personally appeared Levi Huff; John B. Allen, Rebecca *Dun*, Harvey D. Lipes, Samuel H. Lipes and Charles T. Lipes, Samuel C. Showalter and V. C. Showalter, of the Respondents named in the answer hereto annexed, and to be filed to the Bill filed by the Complainants in the cause now pending in Chancery in the Circuit Court of the United States, for the Western District of Virginia, at Lynchburg, wherein David H. Lipes, Ex'or, &c., and others, are Complainants, and Wm. A. Glasgow, Ex'or, &c., and others, are Defendants, and made oath that the facts in said answer set forth are true to the best of their knowledge, information and belief.

84

Given under my hand this 9th day of June, 1879.

F. H. MAYS,
U. S. Com'r, Western Dist. Va.

VIRGINIA—BOTETOURT COUNTY, ss:

This day before me the undersigned, a Justice of the Peace in said County, personally appeared Martha B. Lipes, Wm. L. Lipes, *San*francisco Lipes, Margaret Lipes, Danville Kessl*ar* and Peter Kessl*ar* her husband, M. J. Houseman, S. Houseman, J. M. Lipse, C. Lipse, Taylor Lipse, Henry Lipse, of the Respondents named in the answer mentioned in the foregoing certificate, and made oath that the facts therein set forth are true. Given under my hand this 20th day of June, 1879.

J. P. LINKENHOKER, J. P.

85 VIRGINIA—BOTETOURT CO., TO-WIT:

This day personally before me, a U. S. Commissioner, came Esther Lipse (widow of Sam'l Lipse, dec'd), one of the parties Respondent in the answer in Ch'c'y hereto annexed, and to be filed in the Circuit Court of the United States, and made oath that the facts set forth in the foregoing *Bill is* true to the best of her knowledge and belief.

Given under my hand this 28th day — June, 1879.

F. H. MAYS,
U. S. Com'r, Western Dist. Va.

VIRGINIA—ROANOKE COUNTY, ss:

Personally appeared before me the undersigned, Commissioner in Chancery in and for the County aforesaid, Joel G. Custer, and made oath that the facts set forth in the foregoing answer in Chancery are true to the best of *their* knowledge, information and belief. Given under my hand and seal this 16 day of September, 1879.

JAMES W. PALMER, [SEAL.]
Commissioner.

Fee for Af't, 25.
Paid by J. G. Custer.

The following is a copy of the Cross-Bill filed by Levi Huff and Catharine his wife, and others, referred to in the foregoing decree:

CIRCUIT COURT OF THE UNITED STATES,
FOR THE WESTERN DISTRICT OF VIRGINIA.

Cross-Bill filed by leave of the Court in the Chan-
86 cery cause therein pending and undetermined, wherein David H. Lipes, in his own right and as surviving Executor of Moses Lipes, dec'd, and others (who are non-residents of the State of Virginia), are Complainants, and William A. Glasgow, as Executor of Charles C. Spears, deceased, Madison McCullock, Sallie Moore Spears, infant, and others, are De-

fendants, by the Defendants, Levi Huff and Catharine his wife, Barbara Brownlee, Ferdinand Leffel and Rebecca his wife, Luther Reynolds and Dyce Ann his wife, Samuel M. Lipse, Jr., Samuel Houseman and Martha J. his wife, John M. Lipse, William L. Lipse, Rebecca and her husband John B. Allen, Margaret Lipse, Peter Kessler and Danville his wife, Christopher Lipse, Francisco Lipse, Taylor Lipse, Harvey D. Lipse, in his own right and as Adm'r of Samuel D. Lipse, dec'd, Esther Lipse, Robert Lipse, Millard F. Lipse, Anna V. Lipse, Charles Lipse, Bowyer Lipse, Mary Lipse, Caroline Lipse, Eugene Lipse, (the last six being infants and suing by their next friend Levi Huff,) Samuel H. Lipse, Virginia C. Showalter and her husband Samuel Showalter, Charles T. Lipes, Lewis T. Custer, Christopher Custer, Joel G. Custer, in his own right and as Adm'r of Samuel Custer, dec'd, W. E. Lollis and M. Lollis his wife, J. Neighbors and Ellen his wife, A. Smith, B. Smith, C. Smith, D. Smith, Jeff Smith, Henry Lipse, Samuel Lipse (son of Joseph Lipse), Moses Watkins and Rebecca his wife, and Catharine Lipse, (all of whom are
87 Defendants and residents of the said Western District of Virginia, and have answered the Bill of the Complainants,) *against their co-defendants*, the said William A Glasgow, as Executor of the said Charles C. Spears, dec'd, Sallie Moore Spears, —— Lewis and Sallie his wife (who was the widow of the said Charles C. Spears, dec'd.) Wm. A. McCue, Madison McCullock, Robert K. Godwin, and Wm. McCreery.

Humbly complaining, the said Levi Huff and his co-plaintiffs in this Cross-Bill represent that heretofore, to-wit: on the — day of ———, 1879, the said David H. Lipse, as Executor of Moses Lipse, deceased, and his said co-complainants, filed in the said Court their Original Bill, against the said Glasgow, as Executor of C. C. Spears, and others, as recited in the caption and therein averred, that in 1859, at his residence in said District, died Moses Lipse testate; that David H. Lipse and Samuel M. Lipse having been named Executors in the will, qualified as such, and having been authorized so to do by the will, sold the real estate of their Testator, containing 391 acres, situated in Botetourt County, for $38 an acre, to said Charles C. Spears (then alive), and received from the purchaser the cash payment, $4,952.66, and for the balance took his two several bonds, each for a like sum, and payable on 3d Octo., 1860, and on 3d Octo., 1861, respectively, to the said Executors, and that the said sale was made for the payment of the sum of $14,858, meaning, of course, the gold coin of the United States, or of its equivalent; that the cash pay-

88 ment was made in such medium, and that the said Bonds were in effect payable in such, and in such only; that the complainants in the Original Bill, and the plaintiffs in this Cross-Bill were the children, or the representatives of the children, of the Testator, Moses Lipse, dec'd, and related to him and entitled under his will, as set forth in the Original Bill; that not one dollar of the deferred payments on said land has ever been paid lawfully, either by the purchaser, C. C. Spears, in his lifetime, or by any one for him since his decease, which occurred on 2nd September, 1862, and that Wm. A. Glasgow, (named in his will as Executor,) qualified as such, that he left a widow, Sallie, now wife of —— Lewis, and one child, *en ventre sa mere*, Sallie Moore Spears, his only heir at law, for whom he provided as stated in the Original Bill; that the said David H. Lipse, at the time of his and his brother Samuel's qualifications as Executors of their father, Moses Lipes, was (as he ever since has been) a resident of the State of Indiana, where he remained all during the late rebellion, whilst his co-executor was then, and until his decease remained, a citizen of Botetourt County; that their trust and powers were joint as such fiduciaries, and that neither could act in such capacity *solely*, but could only act jointly as such Executors in conveying the said land to the purchaser and in releasing the

89 same from all lien for the unpaid purchase money thereof; and that only the legal tender money of the United States could lawfully be received in payment of the said bonds so as to entitle the purchaser to a conveyance and to a release of the lien for the purchase money, and that these facts were well known to said purchaser in his lifetime, and after his decease unto his Executor. But that nevertheless the said Glasgow, availing himself of his position as a lawyer of learning and experience, and ample acquaintance with the resident Executor, Samuel Lipse, advised him that he had the power and that it was his lawful duty to receive Confederate States treasury notes as and for payment of said bonds, and to convey the said land to him, the said Glasgow, as Executor of C. C. Spears, deceased, and by such advice, and by persuasion, inveiglement, threats, coercion and duress, did actually prevail on the said resident Executor to deliver up to him, the said Glasgow, the said bonds, and to receive therefore a check on the Bank of Fincastle, dated about April, 1863, for the amounts of said bonds, under the impression, also induced by the representations of said Glasgow, that the said check would be paid in such money as the said resident Executor had been accustomed to receive at the said Bank before the war. And the Original Bill further alleges that, induced by such advice and co-

90 erced by threats and duress and circumstances brought to bear on his mind by the said Glasgow, the said resident Executor did execute a deed dated 7 April, 1863, conveying said land unto said Glasgow, as Executor of C. C. Spears, by whom shortly afterwards the land was conveyed to Wm. A. McCue, who, a few months later, conveyed it to Madison McCullock, who still retains possession of it. All whereof, both the receipt of the Confederate States treasury notes and the execution of the deed of conveyance, was without the knowledge or approval of the non-resident Executor or any of the Legatees of Moses Lipse, deceased, or of their representatives, and that the said Glasgow, although by wrong and undue influence, amounting to moral duress, he compelled the resident Executor to receive Confederate States treasury notes of him in payment for the deferred installments of the purchase money of said land, yet when, a few weeks later, he conveyed the same land to McCue, took good care to require of McCue the payment of $12,000 of the purchase money in the gold coin of the United States, and to see that McCue required the same of McCullock, and to secure the payment thereof to himself as Spears' Executor, in the said gold coin, by a deed of trust on the said land, which is yet unsatisfied except as to a portion of the interest. The said Original Bill also charges that the payment of the said bonds in Confederate States treasury notes, or in aught else than the gold coin of the
91 United States, or its equivalent, was illegal and null, and was a fraud on the rights of the Legatees and others entitled under the will of Moses Lipse, dec'd, none of whom ever gave and intelligent or voluntary assent thereto. And did not satisfy the claim of those so entitled to said purchase money in law or in equity, and that the same remains now wholly unpaid. And that the deed of conveyance executed by the resident Executor, acting *solus* and not with the conjunction and approval of his co-Executor, is null and void, and that the title to the land still remains in the surviving Executor for the securing of the payment of the two last installments of the purchase money, to-wit: $9,905.33, with interest from 3rd October, 1860, until paid.

The Original Bill prays that the said deed of conveyance be decreed to be annulled; that the said Glasgow as such Executor be decreed to pay *de bonis testatoris*, the said unpaid balance of the purchase money with its interest, and that in default of such payment within a limited period, the said land be sold to pay the same—the said deeds of trust therein being regarded as for the benefit of those who are justly entitled to the purchase money.

Now these plaintiffs, in this their Cross-Bill, have filed their answer admitting the aforesaid allegations of the Original Bill, and do now here adopt and repeat those allegations
92 as and for the allegations of this their Cross-Bill, and do also adopt and repeat the prayers of the Original Bill, and do expressly charge that the sale of said land was for lawful tender money of the U. S.; that the bonds for the two deferred installments could lawfully be satisfied in nothing else; that the actings and doings of said Glasgow in obtaining those bonds by the payment of Confederate treasury notes to the resident Executor were illegal, oppressive, collusive and fraudulent, as were likewise his actings and doings in procuring the conveyance of the land to him by the resident Executor, whom he well knew not to have the legal authority to convey the same in the absence of his co-fiduciary, and could confer no rights upon him or those represented by him as such Executor, to the detriment of the rights of the non-resident legatees who were in the State of Indiana, loyal citizens, at the time, or of the resident legatees *where* were here at the time, but who at no time intelligently or voluntarily approved either of the receipt of the Confederate money or of the conveyance of the land, and they further charge that the said receipt of Confederate money by the resident Executor and the conveyance by him of the said land to the said Glasgow were brought about and induced by a conspiracy concerted and executed by said Glasgow and others to procure the said bonds and the title to the said land by the delivery of an illegal
93 and worthless currency, whilst he himself contemplated all the while (and actually effected) the sale by himself of said land for the lawful and valuable gold coin of the United States. And they do pray that the said William A. Glasgow, as Executor of said C. C. Spears, dec'd, the said Lewis and wife, Sallie Moore Spears, by her guardian ad litem Madison McCullock, Wm. A. McCue, Robert K. Godwin, be made parties defendants to this Cross-Bill, and be required to answer all singular its averments on their corporal oaths; that in addition to the specific relief prayed for as aforesaid in the original Bill, there be granted unto them such other and further and general relief in the premises as the nature of their case may require and as unto equity shall seem meet, &c., &c.

Levi Huff and the others named as pl'ffs herein in the caption. By their counsel,

L. C. HANSBROUGH.

And at another day, to-wit: At a regular term of the Circuit Court of the United States of America for the Western Dis-

trict of Virginia, held at the Court Room thereof in the City of Lynchburg, on Tuesday the 23rd day of March, 1880:

On the motion of the Defendants Madison McCullock, William A. McCue and William A. Glasgow, Executor of Charles C. Spears, deceased, by counsel, they have leave to file
94 their separate answers to the original and Cross-Bills filed in these causes, upon condition that the filing of the same shall not delay the trial of the respective causes, whereupon they filed the same, to which the plaintiffs replied generally. The said answers are in the words and figures following, to wit:

Answer of Madison McCullock.

The answer of Madison McCullock to a Bill of Complaint exhibited against him and others in the Circuit Court of the United States for the Western District of Virginia, by David H. Lipes in his own right and as the surviving executor of Mosés Lipse, deceased, and others, complainants, and also to a cross-bill exhibited against him and others, in said cause, in the same Court, by Levi Huff and Catharine, his wife, and others, compl'ts.

This respondent saving to himself the benefit of all proper exceptions to the said bills for the errors and imperfections therein, for answer to such parts thereof, as he is advised it is material for him to answer, says: that he is now about sixty years of age, that he has lived from his boyhood in the neighborhood of the Lipes farm, on which he now resides; during which time he has been in intercourse with members of the Lipes family, frequently seeing and talking with Samuel Lipes, deceased, as long as he lived. Respondent was ac-
95 quainted at the time with the purchase of the farm by Spears and of his occupancy of it, and sale to McCue. It is true that in the latter part of 1863, McCue sold and conveyed the sd. farm to this respondent and Joseph F. Robinson, and that Robinson afterwards conveyed to this respondent his interest in the same, and that respondent has since to the present, been seized of the entire farm. Robinson, his partner in the purchase from McCue, was born and raised and had resided until the purchase, adjoining and in sight of the Lipse farm, and the executor, Samuel Lipes, resided within a mile of the Lipes farm; the deed of Samuel Lipes' executor to Spears' executor, acknowledging the entire payment for the land, and conveying it to Spears' executor with general warranty of title was of record, and respondent avers that although it was generally known throughout the neighborhood that re-

spondent and Robinson were in treaty with McCue for the purchase of the farm for some time before he completed his purchase, that not a syllable of dissatisfaction was heard by either of them from Samuel Lipes, or question of Spears' estate having perfect right to the land from any person whatever; and although respondent since his purchase has occupied the land ever since, he never heard any question as to his perfect title thereto, until some four or five years ago, during a visit of David H. Lipes to his brother Samuel, he understood that some question was raised as to the right of Spears' es-
96 tate. Respondent knows nothing about the matters alleged against his co-defendent, W. A. Glasgow, executor of C. C. Spears, deceased, nor did he ever hear of the suggestions therein against the said Glasgow of fraud and unfair dealing before the bringing of this suit.

Respondent having bought from McCue who bought of Spears' executor, and who had conveyance from Samuel Lipes executor in which he acknowledged Moses Lipes' estate satisfied the entire price agreed to be paid by Spears, is advised that his title is good, and sustained by the general warranty of Samuel Lipes, and that neither the complainants in the Original or Cross-Bill have right to maintain such charge against respondent's land as they assert. And having answered as far as he is advised it is material for him to answer, he prays to be dismissed with his costs in this behalf expended.

MADISON McCULLOCK.

STATE OF VIRGINIA—COUNTY OF BOTETOURT, TO-WIT:

This day Madison McCullock appeared before the undersigned Commissioner of the United States, authorized as such to take depositions and administer oaths, and being by me duly sworn, says that the statements contained in the foregoing answer made of his own knowledge are true, and so far as made on information from others he believes them to be true.

Given under my hand this 21st day of February, 1880.

WM. B. SIMMONS,

97 Com'r to take testimony in case of Lipes' executor vs. Spears' executor.

Answer of William A. McCue.

The answer of Wm. A. McCue to Bill of Complaint exhibited against him and others in the Circuit Court of the United States for the Western District of Virginia by David H. Lipes in his own right and as surviving executor of Moses

Lipes, deceased, and others, complainants, and also to a Cross-Bill exhibited against him and others, in said cause in said Court, by Levi Huff and Catharine, his wife, and others, complainants.

This respondent saving to himself the benefit of all proper exceptions to said bills for the errors and imperfections therein for answer to such parts thereof as he is advised it is material for him to answer, says: It is true that respondent bought from W. A. Glasgow, executor of C. C. Spears, deceased, the Lipes farm in the Bills mentioned, situated in Botetourt county, and occupied the same as his residence from the Spring of 1863 until he sold it to M. McCullock and J. F. Robinson in the Fall of 1863. When respondent bargained for the land, it had been entirely paid for, but no conveyance had been made. This fact he understood from Glasgow and also from Samuel Lipes, executor of Moses Lipes, deceased. This respondent bought and contracted for the land on the 11th of February, 1863, and it was agreed that he should have possession in the March following, and conveyance of
98 title so soon as the title should be made to the said Glasgow executor from Lipes' executor. Possession was accordingly given to respondent in March, and the conveyance was made to him in April, at the same time that Glasgow, executor, received conveyance from Lipes' executor.

During respondent's residence on the farm he occasionally met with Samuel Lipes, who resided within a mile, or such a matter, of him, both having their postoffice near by at Switzer's Store and Mills, the nearest point of trade to each, and respondent never heard from the said Samuel or any other person that there was any question or dissatisfaction as to the payment by Spears and his executor for the land, or any question or objection to the title as held by Spears' executor. Respondent continued to reside in Botetourt county until about 1872, and until the bringing of this suit never heard of any claim that Lipes' representatives were not fully satisfied the purchase money from Spears and his estate.

Respondent having bought from Spears' executor the land on which the entire purchase money had been paid, as vouched by the word, and afterwards by the deed of Samuel Lipes, executor of Moses Lipes, deceased, is advised that his title is good, and not subject to any such charges as are asserted
99 by the complainants, and having answered as fully as he is advised it is material for him to answer, prays to be hence dismissed with his costs in this behalf expended.

W. A. McCUE,
By Francis T. Glasgow, his counsel.

STATE OF VIRGINIA—CITY OF STAUNTON, TO-WIT:

This day Wm. A. McCue personally appeared before the undersigned, David Fultz, Commissioner of United States, and being duly sworn, says that the matters and things stated in the foregoing answer as of his own knowledge are true, and stated on information derived from others he believes to be true.

Given under my hand this 1st day of March, 1880.

DAVID FULTZ,
Commissioner United States.

Answer of Wm. A. Glasgow.

The answer of W. A. Glasgow, executor of Charles C. Spears, deceased, to a Cross-Bill exhibited by Levi Huff and others against this respondent and others, to an Original Bill which was exhibited by David H. Lipes in his own right and as surviving executor of Moses Lipes, deceased, and others, against the said Levi Huff and others (the complainants in said Cross-Bill), and this respondent and others in the Circuit Court of the United States for the Western District of Virginia.

100 This Respondent, saving to himself the benefit of all proper exceptions to said Cross-Bill for the errors and imperfections therein, for answer to such parts thereof as he is advised it is material for him to answer, says, that as to so much of the said Cross-Bill as reasserts allegations of the Original Bill he refers to his answer to the Original Bill heretofore filed, and asks that the same be now read with this answer. Since the filing of said answer Respondent's attention has been called more definitely than before to these matters, and his memory has been thereby refreshed, and he will now state, so far as he is able to recall them, particulars not embraced in his former answer. On or about the 3rd day of October, 1862, when Spears' last land payment became due, Respondent went to see the Executor, Samuel Lipes, at his house, to make the payment. When he stated to him his business the said Samuel expressed some unwillingness to receive it, and said that he desired to see some persons before doing so. Respondent does not remember that he stated objection to the currency; it was well understood that it was not a legal tender, and that it was optional with him whether he would receive it. Respondent does not remember to have seen the said Samuel again until the 23d day of October, 1862. On that day the said Samuel came to the office of this Respondent in Fincastle, some eight miles from the residence of the s'd Samuel, bringing

101 with him Spears' bonds, and soon after entering the office mentioned to Respondent his business to collect the payment, and observed that he had seen most of the heirs, and that they wanted their money; that he had consulted with counsel, and concluded to take it, if Respondent was still ready to pay; Respondent expressed his readiness, and told him that he still had the money in the Bank, and thereupon gave him his check for the amount, not having a doubt of its being a fair and honorable discharge of the balance due from Spears on the land, and felt assured by what transpired that it was entirely satisfactory to Lipes' Ex'or.

And Lipes having thus accepted payment of Spears' liability in the currency of the countr Respondent received without objection, in the same currency, large amounts due Spers' estate, on debts of like character contracted and payable before the war.

Respondent indignantly denies that he used either device or persuasion, or threat, or any unfair means whatever, to influence the said Samuel as to what he should do; Respondent offered to pay a debt due from the estate of Spears, of which he was the legal representative, and made the payment in the currency of the country to a creditor who willingly accepted it, and is advised that to have done less would have been a failure to do his duty.

Moreover, Respondent says that he had little acquaint-
102 ance with the Lipes family, the heirs and distributees of Moses Lipes. He does not remember ever to have had a transaction, other than that mentioned in this Answer, with any of them, except that on one occasion he appeared *on* retainer by the sd. Samuel, Executor, to aid J. T. Anderson, counsel for the Executors, in defence of a claim set up by Daniel Lipes by action at law against the executors of Moses Lipes.

Until long after the payment mentioned above of the balance on the land, Respondent had no acquaintance with the Complainant Huff, further than to know him by sight as Mr. Huff. He was not aware until sometime after that Huff had any connection with the Lipes family, or interest in the estate. He is unable to recall any intercourse, nor does he believe he had any, or any transaction whatever with said Huff until long after, nor has Respondent ever had any particular business or acquaintance with the sd. Huff to this day. He merely knew him when he saw him.

Further, Respondent refers to the settlements before the Commissioner of Accounts, by Lipes' Ex'ors, as showing not only re-acknowledgment by the Ex'or of the payment for the land according to contract, but also acknowledgments by all

the Complainants in the said Cross-Bill who were entitled as distributees of Moses Lipes, that they had received their portions thereof. The vouchers being on file in the
103 County Court of Botetourt can only be withdrawn from the files by the representatives of Moses or Samuel Lipes, by permission of said County Court; and this Respondent has given them, through their attorneys, notice to produce them on the hearing of these causes.

And again denying all unfairness in the transactions in question and affirming that he has done nothing but his duty as Executor of Charles C. Spears, he prays to be hence dismissed with his costs, &c., in this behalf expended.

This day personally appeared before me Wm. A. Glasgow, Executor of Chas. C. Spears, deceased, and made oath that the matters and things set forth in the foregoing answer are true so far as the same are stated on his own knowledge, and that those matters and things stated on information he believes to be true.

Witness my hand this 23rd March, 1880.

F. W. RIVES, Clerk.

And at another day, to-wit: At the September term, 1880, of said Court—these causes were continued generally.

And at another day, to-wit: At the March term, 1881, of said Court—these causes were continued generally.

104 And at another day, to-wit: At the September term, 1881, of said Court—these causes were continued generally.

And now at this day, to-wit: At a regular term of the Circuit Court of the United States of America for the Western District of Virginia, held at the Court Room thereof, in the City of Lynchburg, on Saturday the first day of April, A. D. 1882, being the same day and year first herein mentioned:

This day came this cause on to be heard on the Bill and the exhibits therewith filed, on the separate answer of Defendant Glasgow and the exhibits therewith filed, on the separate answers of Defendants McCue and McCullough, the order of publication duly executed on the non-resident Defendants Sallie Lewis and her husband —— Lewis, Sallie Moore Spears and William McCreery, on the answer of the infant Defendants by their guardian ad litem F. W. Rives, on the joint answer of Levi Huff and the remaining adult home Defendants, on the Cross-Bill of Levi Huff and others, resident Defendants, against their co-defendants, the said Glasgow as such Executor, Sallie Moore Spears, —— Lewis and Sallie his wife, William A.

McCue, Madison McCullough, William McCreery and Robert K. Godwin, on the separate answers thereto of William A. Glasgow, as such Executor, William McCue and Madison McCullough, on orders of publication against the non-resident Defendants thereto, on the answer of the infant Defendants thereto by F. W. Rives as guardian ad litem, on the exhibits filed and on the depositions taken in the cause, and was argued by counsel: On motion of the Defendant William A. Glasgow, by his attorneys, the Court adjudged, ordered and decreed that the depositions of Esther Lipse, widow of Samuel Lipse, deceased, of Levi Huff, husband of Catharine, daughter of Moses Lipse, deceased, of Moses Watkins, husband of Rebecca, a daughter of Joseph Lipse, deceased, and of John B. Allen, husband of Rebecca and daughter of Daniel Lipse, deceased, be ruled out as incompetent testimony in this cause against the estate of C. C. Spears, deceased; and on motion of the Plaintiffs, by their attorneys, the Court adjudged, ordered and decreed that the deposition of William A. Glasgow, taken in this cause, be ruled out as incompetent testimony against the estate of Moses Lipse, deceased, so far as the latter deposition concerns transactions which are the subject of investigation in this cause and to which Samuel Lipse, who was deceased at the time the same was taken, was a party, tho., at the hearing of this cause, the Defendants tendered the bond of F. T. Glasgow undertaking and assuming to pay the costs for which the said Glasgow, as such Executor, might be liable in
106 this cause, which bond is solvent and sufficient; the deposition of the Complainant David H. Lipse being read after the deposition of the said Glasgow, and without objection at the hearing of this cause.

Whereupon the Court, considering this cause, is of opinion (for reasons in writing set forth and filed with the papers of this cause, and made a part of this decree,) that the said Moses Lipes, deceased, by his last will and testament, dated 5th December, 1859, and admitted to probate in Botetourt County Court June 11th, 1860, created in his Executors, the said David H. Lipse and Samuel Lipse, a power to sell and to divide among his twelve children the proceeds of the sale of his real estate, which was the tract of 391 acres of land situate in the said county, and now in the possession of the Defendant, McCullough; that in pursuance of the said power his said Executors jointly sold the said land on 10th September, 1860, to the said C. C. Spears, in his lifetime, for the sum of fourteen thousand eight hundred and fiifty-eight dollars ($14,858); that the said purchase money was payable only in specie or other legal tender money of the United States; that thereof there

was paid one-third (or $4,952.66) to the said Executors of Moses Lipes, deceased, cash in hand at the time of the sale in the money wherein the same was payable; that for the remainder the said Spears executed to the said Executors, David and Samuel Lipse, his two bonds, each for the sum of $4,-
952.66, and payable on the 3rd day of October, 1861,
107 and on 3rd day of October, 1862, respectively, and solvable only in such specie or legal tender money; that the said bonds have never been paid, and remains a subsisting debt against the estate of the said C. C. Spears, deceased, and collectible by the surviving Executor of Moses Lipse, deceased; that the alleged payment of said bonds to the said Executor, Samuel Lipse, in his lifetime, in "Confederate money," or in checks on the Bank of Fincastle, which then paid out Confederate money, was a nullity, the said Samuel Lipes, as such Executor, having no authority to receive anything but specie or other legal tender money of the United States, under the existing circumstances, in payment of the said bonds or of either of them; that in execution of the power conferred on them by the will of their Testator, the said Executors, David H. Lipse and Samuel Lipse, both having qualified and both surviving, could only divest themselves of the title to the said land by their joint conveyance thereof; that no such joint conveyance thereof having been made by them, the title to the said land remains in the survivor of those Executors; that the deed executed the 7th day of April, 1863, by the said Samuel Lipse, in his lifetime, during the late rebellion, whilst his co-Executor was in the State of Indiana, and without his knowledge or concurrence or assent, was a nullity, and derived no validity from the Act of the General Assembly of Virginia, passed the 5th
day of March, 1863, which is recited in the deed, the
108 said Act being, in the opinion of the Court, invalid, in that it militates against the rights and remedies of loyal citizens of the United States, as against the interests of the said surviving Executor and those for whom as such he is suing; that the successive deeds of conveyance of the said land from the said Glasgow, as such Executor, to William A. McCue, one of the Defendants, also dated the 7th day of March, 1863, and from the said McCue to the Defendants, McCullough and Robinson, and from the said Robinson (of his interest therein) to the said McCullough, and the deeds of trust executed thereon by the said McCue to the Defendant McCreery, Trustee, for the benefit of the said Spears' Executor, and by said Robinson and McCulloch to the Defendant Robert K. Godwin, Trustee, for the benefit of the said McCue, which deeds are mentioned in the bill and proceedings, are also null

and void, being founded on the deed aforesaid from said Samuel Lipse, of 7th of April, 1863, to said Glasgow, whence, with notice of the infirmity of the said deed, they derived title, also, that the alleged settlement before James T. Logan, Commissioner of Accounts in said County, in 1864, made by Samuel Lipse in his lifetime, as Executor of Moses Lipse, deceased, constitutes no bar to the claims set up in this cause for the recovery of the two deferred payments of the said purchase money of the said land by the Complainant, David H. Lipse, as surviving Executor of Moses Lipse, deceased, suing in behalf of his co-Legatees, he, the said David, having
109 been no party to the said settlement, and not within the jurisdiction of the State of Virginia, but in the State of Indiana, where it was made during the war without any notice to him.

And the Court doth adjudge, order and decree that the said deeds of conveyance and trust be cancelled and annulled, and that the said Complainant, David H. Lipse, as surviving Executor of Moses Lipse, deceased, do recover of the Defendant, William A. Glasgow, as Executor of C. C. Spears, deceased, the sum of nine thousand nine hundred and five dollars and thirty-three and a third cents ($9,905.33), with interest at the rate of six per centum per annum on $4,952.66 thereof from the 3rd day of October, 1861, and on the residue thereof from the 3rd day of October, 1862, until paid, and his costs by him about the prosecution of his suit in this behalf expended; and that unless within ninety days from this day the said Glasgow, as such Executor of C. C. Spears, deceased, shall, *de bonis testatoris*, or some one for him, shall pay to the said David H. Lipse, as such surviving Executor, or to his attorneys, G. W. Hansbrough and R. F. Mays, the said costs and the said debt and interest, then it shall be the duty of L. C. Hansbrough, Esquire, (who is hereby appointed a Special Commissioner for the purpose,) after having advertised the time, place and terms of the sale for four successive weeks next before the day of sale, in some newspaper or newspapers published in the
110 County of Botetourt and elsewhere, and by hand-bills, on the premises, sell the said tract of land, or so much thereof as may be necessary to pay said costs, debt and interest and the expenses of the sale, at public auction, to the highest bidder, on the following terms, viz: One-fourth cash, and the balance in three equal annual payments, with interest from the day of sale, taking from the purchaser bonds for the deferred payments with approved security, and retaining the title until the whole purchase money shall be paid. But before acting under this decree the said Special Commissioner shall,

in the Clerk's Office of this Court, at Lynchburg, enter into bond in the penalty of $5,000, with approved security, conditioned for the faithful performance of his duties as such Commissioner.

The said Commissioner shall hold the proceeds for distribution among the parties according to their rights, as may hereafter, at the election of said Glasgow, be ascertained by reference to a Master, as to the voluntary receipt of legacies from Samuel Lipse, one of the said Executors. While this reservation is made for Defendant Glasgow, Executor of C. C. Spears, deceased, so that he may not be prejudiced in any claim he may be advised to assert against such of the parties as may have voluntarily received their legacies in this depreciated currency,

111 he cannot now, or at any future time, be entitled to any credit on the payments claimed by him to have been made on by him to the said Samuel Lipse in his lifetime, which have already been disallowed by this Court as payments on the bonds for the deferred payments on the said land.

And on the motion of Wm. A. Glasgow, Executor of C. C. Spears, deceased, an appeal is awarded him from this decree. And sixty days from this date are allowed within which to file with the Clerk of this Court a bond according to law in the penalty of ten thousand dollars, approved by the Judge of this Court, the Counsel for the parties interested in this decree being now present, acknowledge notice of this order and waiving citation.

The depositions referred to in the foregoing decree are in the words and figures following, to-wit:

Deposition of Catharine D. McClure.

Catharine D. McClure, a witness of lawful age, being duly sworn, answering, deposeth and saith as follows?

1st question by Plaintiffs counsel. What is your age, and where did you live in the fall and winter of 1862?

Ans. I was forty-nine last August. I live at Mr. Samuel Lipes', near Waskey's Mill, in Botetourt County.

112 2. State whether or not you saw there at the house of Samuel Lipes Mr. Wm. A. Glasgow about that time.

Ans. Yes, sir; I saw him there.

3. State what did he announce to be his business there at that time, if he did tell his business.

Ans. He said he came to pay the balance on the land purchased by Mr. Spears of Mr. Moses Lipes' estate.

4. State what he produced, if anything.

Ans. He fetched Confederate money there, and counted it out on the candle-stand.

5. Was the bundle of Confederate money a large one, or was it a small one?

Ans. It looked like a right large bundle.

6. Did you or did you not see him him count out the Confederate money?

Ans. Yes, sir; I saw him count it out.

7. Did or did not Samuel Lipse accept or receive the said Confederate money in payment of the said balance of the purchase money due on the said lands?

Ans. No, sir; he would not take it.

8. If Samuel Lipes said anything in answer to Mr. Wm. A. Glasgow's offer to pay him for the said land in that Confederate money, in your presence, tell what Mr. Samuel Lipes did say?

Ans. He said that he would not take it; that it was no account.

9. State if you know what Mr. Wm. A. Glasgow then *did*.

113 Ans. He asked him if he would give him a check on the Fincastle Bank if he would take it. (That is the check.)

10. What did Samuel Lipes say to this offer?

Ans. He said that he would take the check.

11. If Samuel Lipes gave any reason for taking the check state what it was.

Ans. He gave his reason, but whether just in Mr. Glasgow's presence or not I do not know: I heard him (Lipes) say that he would take the check as he thought he would get Fincastle money for it, but whether Mr. Glasgow was present when he said this I cannot say.

12. Did or did not Mr. Wm. A. Glasgow take the Confederate money away with him from Mr. Samuel Lipes' house?

Ans. Yes, sir; he took it away with him.

13. Did or did not Mr. W. A. Glasgow then, at the house of Mr. Samuel Lipse, give Mr. Lipse the check which you mentioned?

Ans. No, sir; I do not think he did.

14. State if you know where Mr. Divid Lipse, son of Moses Lipse, dec'd. then lived.

Ans. He lived in the State of Indiana.

15. Was or was not the war between the North and South going on at the time you speak of?

Ans. Yes, sir.

16. State whether or not David Lipse appeared in Botetourt County during the period of that war?

Ans. No, sir; he did not.

114 17. If you know, please state whether or not during that war Mr. Samuel Lipse was in sentiment and feeling a Union man or a Secessionist. (Objected to.)

Ans. He was a Union man during the war and all of his life as long as he lived.

Cross Examined.

1 Q. Were you living at Samuel Lipes' at the time you speak of being at his house?

Ans. Yes, sir. I have been living there for about thirty-eight years.

2 Q. Are you one of the descendants of Moses Lipes, or in any way connected with the family?

Ans. No, sir; I am not connected at all, on either side.

3 Q. Was there any other person present except yourself on the occasion you speak of seeing the Defendant Glasgow at Mr. Lipes'?

Ans. No person but me and Mrs. Lipes, that I recollect of.

4 Q. What time of the day did he he call?

Ans. I think it was in the afternoon sometime.

5 Q. Had you ever seen or had acquaintance with the Defendant Glasgow before?

Ans. No, sir. I knew him when I saw him, but had no particular acquaintance with him.

6 Q. Does it not come within your knowledge that Mr. Samuel Lipes heard during the war from his brother David?

Ans. I cannot be positive *in* it, it sort appears to me
115 that he did get a letter from him during war time; I am not sure.

7 Q. How many of Moses Lipes' children are now living? State as near as you can their names and respective residences.

Ans. Barbara Brownlee, of Botetourt, Katie Haff, of Botetourt, wife of Levi, Moses Lipes, of Missouri, David Lipes, — Indiana, I think are all that are living so far as I now can say.

8 Q. Of whom was Hetty McCluer a daughter?

Ans. She was Joe Lipes' daughter.

9 Q. What children are there of Joseph Lipes, and when did he die, and where reside?

Ans. He resided on James River, in Botetourt County. He died, though, at his father's. No, at Figgate, in Fincastle, but before the war. Hetty McClure is the eldest; she married, as near as I can recollect, in 1865, to Indiana. Henry, the next oldest, lives in Botetourt, on the River, Samuel Lipse

lives in Botetourt, in Horse-fly Valley, Rebecca Watkins, wife of Moses Watkins, lives in Botetourt County, Miss Kate Lipse, also of Botetourt, Josephus Lipes lives in Indiana; are all of these children.

10 Q. Did not Josephus move to Indiana since the war?

Ans. Yes, sir.

11 Q. Were any of Samuel Lipes' sons in the war?

Ans. Yes, sir.

12 Q. They, like their father, were good Union men, were they not?

Ans. Some of them were and some of them were not, but he was opposed to them going.

13 Q. At the time you say payment was offered Mr.
116 Lipes of the balance on the land by Spears' Executor, did not Mr. Lipes give as his reason for preferring a check that he did not like to have so large an amount of money in his house, and that he preferred to have it in bank?

Ans. Not that I recollect of.

14 Q. State what you were doing, and whether you were present all the time he was there?

Ans. Well, I do not recollect what I was doing, whether I was knitting or sewing. I was there all the time, when he came in and when he went out.

15 Q. Can you say what month, or what year it was?

Ans. I do not recollect, but I think it was in October, 1863. I didn't particularly take notice, not thinking, but it was about that time as I now recollect.

16 Q. Had you ever seen the Defendant Glasgow before; if so, state when and where?

Ans. I believe I saw him in Fincastle, I know I saw him in Fincastle, about the time of the suit Daniel Lipse had, I was a witness in that suit, was the 1st time that I saw him. I also think I was in the stage with him on one occasion.

17 Q. You say there was no money paid, now was there any counting of money on that occasion, was there anything except a bundle of papers shown?

Ans. Well, he counted out what was called money, as I told you on the stand. Whether I heard the amount called out I cannot say, I recon I heard it. I suppose it was the amount that was owing.

18 Q. Was there any writing done at the time?
117 Ans. No, sir; not that I recollect of.

19 Q. Then you are certain a check was not then given by the Executor Glasgow, and receipt given by Mr. Lipes?

Ans. No, sir; I know that it was not done then.

20 Q. You still have y'r home with Mr. Lipes' family do you not?

Ans. Yes, sir; I still live there.

21 Q. You are boarded and maintained for the help you render to them, are you not?

Ans. Yes, sir.

22 Q. What relation to you, if any, was the husband of Hetty, the daughter of Joe Lipes?

Ans. He is my brother.

Re-examined by Plaintiffs' Counsel.

1. In answer to the 10th question on cross-examination you say yes—that Josephus Lipes removed to Indiana since the war. Please reflect and answer whether or not Josephus Lipse did or did not remove from Virginia to Indiana *before* the late war?

Ans. Since I have studied over it I believe that he removed from Virginia before or during the war, and had come back on a visit after the war. I know that Miss Kate went with him back to Indiana since the war, and that was what I was thinking about.

And further this deponent saith not.

CATHARINE McCLURE.

118 *Deposition of Harvey D. Lipse.*

Harvey D. Lipes, a witness of lawful age, being duly sworn, deposeth and saith as follows:

1st question by Plaintiffs' Counsel. Give the name of your father and your age, and state where you now live.

Ans. Samuel Lipese. I am forty-one years old. I live near Switzer's Mill, in Botetourt County.

Qu. 2. Where did you reside during the late war?

Ans. I went into the army in August, 1861, as nigh as I can recollect.

Qu. 3. Why did you not go into the war at an earlier date?

Ans. Because I didn't want to go at all.

Qu. 4. Did your father, Samuel Lipes, approve of your going into the Confederate army?

Ans. No, sir; he was opposed to it.

Qu. 5. Were you at home during the war, and if so, did you hear your father express any opinion in regard to the war, and if so, state the substance of his remarks?

Note.—Question objected to by Def'ts Counsel.

Ans. I was at home in March, 1862. I do not know that I heard him express himself much about it. He told me that I had better stay at home; that we would get whipped anyhow.

Qu. 6. Did you ever hear your father speak of the currency issued by the Confederate Government, and if so give the substance of his remarks?

119 *Note.*—Objected to by Def'ts Counsel.

Ans. I have often heard him speak of it, that it was no account and worthless.

Qu. 7. Did he take it willingly in the payment of debt due to himself?

Ans. I do not know, sir. I never seen him receive any.

Qu. 8. State anything that you may know in regard to the payment of money to him as one of the Ex'ors of Moses Lipse, dec'd, arising from the sale of Moses Lipse's real property?

Ans. I do not know of any but the 1st payment. That was paid in Virginia money I think.

Qu. 9. Did you hear him at any time after your return from the army speak of this matter, and the manner of payment?

Note.—Objected to by Def'ts Counsel as hearsay.

Ans. I heard him speak of Mr. Glasgow coming there to his house to pay him some money and that he refused to take it.

Qu. 10. Why did he refuse? And did he say how he was finally paid?

Ans. He said that he refused to take it because it was Confederate money; that the land was not sold for Confederate money, but good money. He said, I believe, that Mr. Glasgow gave him a check to the Fincastle Bank, as nigh as I can now recollect; that he expected to get Fincastle money

120 for that check, and when he brought the check to the Bank that they refused to give him Virginia money, and gave him Confederate money for it.

Qu. 11. Did he take the Confederate money when paid to him at the Bank willingly or under protest?

Note.—Objected to, as well as preceding question and answer, as hearsay testimony, by Def'ts Counsel.

Ans. I do not know that he ever took any out of the Bank himself at all.

Qu. 12. Was your father ever threatened with imprisonment, or his property with confiscation, on account of his refusal to take Confederate money, or for other acts of disloyalty to the Confederate Government?

Ans. Not that I know of.

Qu. 13. Where were you from March, 1862, when at home, until the close of the war?

Ans. I was in the army up to April, 1865. I was captured, and then a prisoner of war to the close of the war.

Qu. 14. Was David H. Lipse in this State, to your knowledge, during the war?

Ans. No, sir; I do not think that he was, to my knowledge.

Cross-Examined.

1 Q. Did not J. J. Allen come to Botetourt from Texas and get up a volunteer company in the early summer of 1861, and did you not leave the County a member of it in the summer of 1861?

Ans. Yes, sir.

2 Q. In answer to question No. 3 above, you say
121 that you didn't want to go all, why did you join Capt. Allen's company of volunteers if you didn't want to go?

Ans. The day that I volunteered we were mustering down there at the mill, and Col. Harman wrote a letter or what you might call it to John J. Allen, stating that all men who did n't volunteer that day, would be conscripted and sent to West Virginia among the bush-whackers.

3 Q. Don't you know that there was no law for conscription in the summer of 1861, and that there was no power to compel men to ~~be~~ enroll until the Confederate Government sometime afterwards passed a law for conscription?

Ans. No, sir; I didn't know anything about it. I had no better sense than to believe what that fellow wrote there about it. I was scared into it.

4 Q. Did you enter the army and desire to see the downfall of the Confederacy?

Ans. I do not know about that. I was no secessionist. I always did believe that if the Confederacy succeeded I would be worse off than if the other side whipped. These were my sentiments all during the war; yet I would not desert.

And further this deponent saith not.

HARVEY D. LIPES.

Deposition of Samuel H. Lipse.

Samuel H. Lipse being next duly sworn according to
122 law, deposeth and saith as follows:

1st question by plaintiff's counsel:

What is your age and where do you live, and what was the name of your father?

Ans. I am thirty-four years old. I live near Blue Ridge, in this county. My father's name was Samuel Lipese.

Qu. 2. Where did you live during the war?

Ans. I live with my father ~~father~~ till the summer of 1864.

Qu. 3. Where were you from the summer of 1864 until the close of the war?

Ans. I was in Ohio a part of the time and in Indiana the rest of the time.

Qu. 4. Did you go to Ohio and Indiana to avoid service in the Confederate army, and did your father, Sam'l Lipes, sanction this act?

Ans. Yes, sir.

Qu. 5. Did your father talk with you about the war and its results, and if so what did he say?

Note.—(Objected to by def'ts counsel.)

Ans. I do not know that he ever talked to me personally, but often in my presence at home in his family. He was opposed to the war from the beginning to the end.

Qu. 6. Were you present at any time when Confederate currency was offered to your father in the payment of debt or debts, and what did he do or say?

Ans. When he had anything to sell and any one wanted to buy anything from him he always asked them the ques-
123 tion, "What kind of money they had." He would never take Confederate money from any one, only for so much as it was necessary for him to use in buying such things as he wanted or was compelled to have.

The foregoing question was objected by defendant's counsel.

Qu. 7. Did not a Mr. Robinson come to your father proposing to buy a horse from him to be paid in Confederate money. Did your father refuse the money or not; and what passed between the parties?

Note.—Question objected to by def'ts counsel.

Ans. Yes, sir; he did come there and wanted to buy a horse for Confederate money, and my father would not receive it. Mr. Robinson, I think, if I mistake not, told him that any man that wouldn't take Confederate money ought to be reported. I think that that was Mr. Robinson, if I mistake not. If it was not him some one else did, but I think it was Robinson.

Qu. 8. What was your father's opinion of Confederate currency?

Ans. He didn't think that it was any account even if the South gained her independence; that it would still be worthless.

Note.—Question objected to by def'ts counsel.

Qu. 9. Were you present at any time when payment for the Moses Lipes real estate was offered?

Ans. No, sir; I was not.

124 Qu. 10. Was your father's liberty or property at any time threatened on account of his disloyalty to the so-called Confederate States?

Ans. No, sir; not in my presence it was not.

Qu. 11. Do you not know that such a sentiment was abroad

in his neighborhood, and that he was regarded as a disloyal man to the so-called Confederate Government?

Objected to by deft's counsel.

Ans. Yes, sir; I do.

Qu. 12. Was David H. Lipse co-executor with Sam'l Lipse in Virginia at any time during the war?

Ans. No; not that I know of. He was not at my father's whilst I was there. Whilst I was absent from home I was a part of the time at his home in Indiana. He was at home whilst I was there.

Qu. 13. Has not the Federal Government paid to your father's estate a considerable sum of money for property lost during the war; the same being paid in consideration of his well established loyalty to the U. S. Government during the late war?

Note.—Excepted to by deft's counsel.

Ans. Yes, sir.

Cross-Examined by Deft's Counsel.

1st. Question. State what money was paid for property lost during the war; the amount; by whom paid; to whom, and for what property?

Ans. It was about $250 or $275. It was paid by the Commissioner of Claims. It was paid to the administrator of my father. It was for horses taken by the Federal army.

125 2 Q. At what time and by whose orders were those horses taken.

Ans. They were taken in May or June, 1864, I think, by General Averill's and Hunter's army.

3 Q. Did not your father hear from your uncle, David H. Lipse, during the war, before you went west?

Ans. No, sir, not that I know of. Certainly not after the United States mail was stopped. He might have heard before the mail was stopped, though I do not know that he did.

And further this deponent saith not.

SAM'L H. LIPSE.

Deposition of Joel G. Custer.

Joel G. Custer, a witness of lawful age, being introduced and sworn according to law, deposeth and saith as follows:

1st Question by Plaintiff's Counsel. What is your name, where did you live in 1860, '61 and '62, and where do you now live?

Ans. My name is Joel G. Custer. I lived in Craig County during the years 1860, 1861 and '62. And I live now in Craig. My occupation is that of a miller.

2 Q. What relative are you to Jacob Custar and Moses Lipse, deceased?

Ans. I am a son of Jacob Custer; I am a grandson of Moses Lipse, deceased.

3 Q. Is your father, Jacob Custer, now living, and
126 did Jacob Custer (your father) send you to collect his interest in the estate of your grandfather, Moses Lipse, dec'd, from the resident Executor, and if so state all that occurred on that occasion?

Ans. My father, Jacob Custer, is not living. My father lived in the County of Roanoke and I was living in the County of Craig, attending to my mill (I had a half interest in the mill, but I called it mine). The Executor of my grandfather's estate communicated to my father the intelligence that he should come and lift his money from the Bank of Fincastle, as there were Federal troops on the northwest of Fincastle, not far distant, and that he didn't think the money safe in the Bank at Fincastle. My father drew up an order signed by himself and my mother to me, empowering me with authority to go to the Executors and collect the money, as he was not able to go himself. I received the order and came to the Executor in Botetourt and presented the order, and he, the executor, gave me a check on the Bank of Fincastle for the money. I called at the Bank of Fincastle, presented the check to the cashier and the cashier presented a species of money (he called it money), I took up the money in my hand and it read this as I remember, "Two years after a treaty of peace between the Confederate States and the United States, I will pay to bearer," the face of the bond *perhaps* $5,000 as near *as I can recollect.*

I criticised the money and asked him what bank it was
127 on. He couldn't answer me, and hasn't answered me yet.

I told him that it was not money; that it was not matured for two years from the face of the bond. And I held up my printed check on the Bank of Fincastle in my hand, and said this is the kind of money my father directed me to receive, and said that I will not receive that money you offer me. The cashier became a little agitated and said to me in reply that we have a house up here on the hill with iron bars across the windows for you, if you do not take this money. I being overpowered and from the threat of being imprisoned as I supposed took the money compulsorily.

Note.—Answer objected to by deft's counsel, as hearsay it not being shown that defendant was present.

Qu. 4. State who was present at the time, and did they take part in the conversation?

Ans. There were numbers present. Levi Huff was present

for one. The others were all strangers to me, unless my uncle Sam'l Lipse was present. I think perhaps he may have been. I am not sure of that though.

Qu. 5. What did you do with the Confederate money paid to you by the cashier of said Bank of Fincastle?

Ans. I took it to my father Jacob Custer.

Qu. 6. Do you know what became of this money finally?

Ans. It was lost in the going up of the *lost cause*.

Qu. 7. You say in answer to question (4) that there were persons in the Bank other than yourself, Levi Huff and
128 the Cashier. Did they advise you in the matter?

Ans. One person, I suppose it was Levi Huff, spoke to me and told me to take the money as that they would put me in jail and that I would never get out; that was said in a low tone, *a whisper*.

Qu. 8. What was your age at that time?

Ans. I am now going into fifty three. As well as my memory serves me was in December, 1862. It may have been in 1863; but I am under the impression that it was 1862.

Qu. 9. Is your father and mother living, and if not when did they die?

Ans. They are not living. My father died in 1867. My mother in 1871.

Qu. 10. Are you representing the estate of Jacob Custer in this suit?

Ans. I am not the executor, but I represent the other heirs in this matter, as per agreement. I paid the money required to be paid to the attorneys.

Qu. 11. What kind of money *was* you instructed by your parents to receive from the Bank of Fincastle in payment of the check given you for collection?

Ans. Fincastle money. That is money on the Bank of Fincastle. (Quest. and answer objected to by def'ts counsel).

Qu. 12. Did you give up the check to the Cashier or simply receipt for so much Confederate money paid?

Ans. I gave up the check to the Cashier.

Cross-Examined by Def'ts Counsel.

1st Question. State, if you can, the amount received by
129 you?

Ans. It was between the sum of five hundred and seven hundred dollars. I do not know the exact sum. I have to approximate.

2 Q. Was this the last money received from the Executor by your father's estate?

Ans. It was the last that I received for them. I left the country soon after that time.

Qu. 3. You don't know, I suppose, whether it was the Executor's final distribution or not.

Ans. I do not.

4 Q. Did you give the Executor the receipt of your father and mother for the money, or did they send it to him after you paid it over to them?

Ans. I gave the Executor a receipt for the check on the Bank of Fincastle.

5 Q. At what time did you leave the State, and where did you go, and how long remain?

Ans. I left the State immediately after this business was transacted. I cannot give the exact date. It has been a long time ago. I went to Charleston, West Virginia. I enlisted in the Seventh West Virginia veteran cavalry, and served till the close of the war, and hold an honorable discharge from that regiment.

6 Q. How do you know what your father did with the money you spoke of?

Ans. I saw some of the money when I came home laying in a drawer. I do not know how much.

7 Q. How can you say that the money you saw in the
130 drawer was the same money that you had paid over to them?

Ans. From the size of the notes, and because we had no one then to take in money of that sized bills. They were, some of them, large bills, perhaps $100. And my father and mother told me that this was the money. That that was all they had received of the legacy.

8 Q. Did you count over the money in the drawer and examine it carefully to see if you could identify it, and did you ascertain the amount then; or did you just take for granted what your father said?

Ans. I did not count the money. I examined the bills for identification (that is the large bills).

9 Q. You had not taken down the numbers of the notes paid over to your father, or otherwise marked them so as to be able to identify them, did you?

Ans. I did not.

And further this deponent saith not.

JOEL G. CARTER. *us/*

Deposition of Newton Switzer.

Newton Switzer, a witness of lawful age, being duly sworn according to law, deposeth and saith as follows:

1st Question by Plaintiff's counsel. Where did you live in the year 1860, and do you now reside at the same place?

Ans. I lived at the place in this county known as
131 Waskey's Mills in 1860, and live at the same place now as then.

Qu. 2. Were you present on the day of the sale when Moses Lipse's, dec'd, real estate was offered for sale by his Ex'ors, and if so state the terms and conditions of said sale, if you remember them?

Ans. I was present at that sale, but know nothing more of the terms than it was for one-third cash and the balance on a credit of one and two years from the day of sale.

Qu. 3. Was David H Lipse present at that sale?

Ans. I think that he was.

Qu. 4. Can you say how long after that sale until he returned to his home in Indiana?

Ans. I cannot.

Qu. 5. Was David H. Lipse in Botetourt at any time during the war to your knowledge?

Ans. No, sir; not that I know of.

Qu. 6. When did Samuel Lipse (the resident Ex'or) die?

Ans. I do not remember now what year even. I suppose not more than a year or two. I was at his burial, but do not remember now, as I didn't charge my memory with it.

Qu. 7. Did you ever have any conversation with Samuel Lipse in his lifetime in regard to the payments made on said lands? (Objected to as hearsay by Def'ts Counsel.)

Ans. No, sir; not that I remember of.

Qu. 8. State whether you are a merchant and mill owner, and whether Mr. Lipes was a customer in your store and a dealer in your mill?

132 Ans. I sell goods and am engaged in grinding wheat; Samuel Lipse was a customer in both ways.

Qu. 9. State whether Mr. Lipes was a near neighbor of yours?

Ans. He was.

10th quest. State what was Mr. Lipes' qualifications as a business man?

Ans. I considered him an honest, straightforward man in his business transactions. I always considered him as capable of transacting any business that he had to do.

11th quest. State whether Mr. Lipes was a shrewd business man?

Ans. I wouldn't consider that he knew much about the shrewdness of this day, but I considered him capable of discharging the business that farmers have to attend to.

12th quest. What was Mr. Lipes' politics and sentiments in regard to the late war. "In a word," state whether he was a Confederate or a Union man?

Note.—Objected to as irrelevant by Def'ts Counsel.

Ans. He was a Union man.

13th quest. State if you know whether Mr. Lipes was threatened with arrest during the war on account of his Union sentiments. State anything that you may know on this subject?

Ans. I know nothing on this subject of my own knowledge. It was rumored that he was.

Cross-Examined by Def'ts Counsel.

1st quest. How far did Samuel Lipes live from you,
133 and was not your store and mills his nearest store and mill, and was not his postoffice at your store?

Ans. He lived about one mile from where I did. My store and mill was his nearest store and mill. His post office was also there. He did the most of his trading there. He himself was the Post Master there for some time after the war, though he did'nt do much of the post office business. He intrusted that to us and we did it.

2 Q. I understand from you that he was a man of good character, and of remarkably good understanding, was he not quite firm in his own opinions and purposes?

Ans. Yes, he was.

3. Q. Was there much if any Confederate money generally circulated here as early as the fall of 1861; was not the currency in fact at that time Bank notes?

Ans. I think in 1861 the currency in circulation in this part of the county was mostly all Bank notes.

4 Q. Was not Confederate money, when it came into circulation, generally received and current in payment for property and in settlement of debts? Was not this the case throughout 1862?

Ans. It was by some persons. I received a good deal of it myself. Others were not disposed to take it; I would say that the most of persons generally received it, yet some would not receive it as I recollect.

5 Q. Did'nt you receive Confederate money in *yo* trade generally, and did you not have settlement with those who
134 traded with you during the war in Confederate money, and had not you such dealings with Samuel Lipes?

Ans. I did receive Confederate money in my trading generally, and had settlements with most of those trading with me during the war in Confederate money. Mr. Lipes was one that did'nt want Confederate money for what he had to sell. He

preferred to let the money stand for wheat that I had bought of him till after the war, as many others did.

6 Q. Does your transactions and trade show that as early as 1862 Mr. Lipse had declined to sell to you for Confederate money anything that he wished to sell?

Ans. I have not distinct recollection as to the particular time.

7 Q. Has it not heretofore been and is it not now your custom at the mill to allow farmers to deposit their grain in your mill, to remain there until such time as they shall think proper to sell—the time of sale being at the option of the owner of the grain?

Ans. We receive wheat in the mill frequently to be settled for at some future period, sometimes at a fixed day and sometimes left open, but always to be fixed before the new crop comes in, or rather before the 1st of July following. If they choose to let it lie over they must take the price at that time, 1st of July.

8 Q. Did you not do a large business during the war, buying and grinding wheat and selling flour, and were not your money transactions in Confederate money even *later* than the year 1862?

Ans. Yes, sir.

9 Q. Did you not receive a considerable sum of Confederate currency in payment for land during the war?

Ans. Yes, sir, I did.

10 Q. Did you take it because you preferred it to any other, or because it was the only money in circulation generally.

Ans. I took it because there was no other money I believe at the time.

11 Q. At what time did this occur, and how much did you receive?

Ans. It was about the first of the year 1863; I would say about three thousand dollars.

Reëxamined by Plaintiff's Counsel.

1st Question. State whether Confederate money was generally in circulation after the battle known as the Manassas Battle, which was fought in July, 1861.

Ans. I have no distinct recollection when it began to be in circulation first (I mean in this county); I do not now know when it was first issued.

2 Q. You have stated that you *was* a merchant during the war; state whether you did not buy goods with Confederate money during the latter part of the year 1861 and 1862, and whether you did not have to pay higher prices for your goods in Confederate money, and whether you did not charge and sell

your goods and wares at higher prices in Confederate money than goods were sold for before Confederate money was in circulation.

136 *Note.*—Objected to by defendant's counsel as leading.

Ans. Of course I had to pay higher prices than I did before, but what amount of Confederate money I used at that particular time I have no recollection of now. And of course I had to sell my goods higher when I paid higher for them.

3 Q. You have stated that you *was* a mill owner; state whether you in the purchase of your merchandise was in the habit of bartering your flour for merchandise.

Ans. No, sir.

And further this deponent saith not.

NEWTON SWITZER.

Deposition of Green James.

Green James, a witness, of lawful age, being duly sworn, deposeth and saith as follows:

1st Question by plaintiff's counsel. Where do you reside now and where did you reside during the years of 1861, 1862 and 1863, and what public position or office did you hold during the years 1862 and '63?

Ans. I reside in Fincastle, Va. I also resided here in Fincastle during the years 1861, 1862 and 1863. I was a member of the Legislature of Virginia during the years 1862 and 1863. I was one of the representatives from Botetourt County and Craig.

2 Q. State who was your colleague in the Legislature from said counties in the years 1862 and 1863?

137 Ans. Col. John T. Anderson.

3 Quest. State whether you introduced a resolution in the month of January, 1863, having for its object "To authorize fiduciaries to invest funds in their hands in certain cases, and for other purposes, and whether a Bill was passed in pursuance of said resolution on the — day of March, 1863. State your recollection of said matter, also whether you have refreshed your memory by a reference to the Journal of the House, or any other information you may have on the subject?

Note.—Objected to by def'ts counsel on the ground that it is not competent to prove records by parol.

Ans. My attention was called to this thing some weeks ago first. At the time then and now I had and have no recollection on my mind as to the matter. It is now some 17 years since the matter occurred. To-day I, learning that I would be examined on the subject, examined the Journal of the House as to that subject. I find that I did offer such a resolution in Jan-

uary, 1863. I find further, by following up the proceedings of the Legislature, that after considerable discussion the bill reported in pursuance of said resolution and sundry disagreements between the two houses of Legislature finally resulted in a committee of conference between the two houses. That committee finally reported favorably upon the bill and it passed both houses and became a law on the 5th of March, 1863. (I only speak from the Journal).

4 Quest. State who were the officers of the Fincastle
138 Bank in the years 1862 and 1863; more particularly who was the Cashier and President of said Bank during said years?

Ans. I have not had access to the Books of the Bank since it closed business; but, speaking from memory, I should say Mr. Wm. A. Glasgow was President and William McCreery was Cashier of that Bank.

Cross-Examined.

1 Q. By counsel for the Defendants. Were you not a Director at times of that Bank and in some measure familiar with the manner in which its business was conducted?

Ans. I was a Director of that Bank for a number of years from first to last, and think that I was as familiar with its mode of doing business as most of its Directors. I conversed freely with the President and Cashier as to their mode of doing business.

2 Q. Did not the Cashier have entire charge of the business transactions of the Bank such as the receiving and paying out, the keeping of the accounts and papers and funds, and did not the President's duties pertain to action of the Board of Directors, and for considering with the Board, of such matters as were brought before it by the Cashier or any of the members of the Board?

Ans. I considered that the Cashier had the whole control of the papers, receiving and paying out the funds. He was the sole ministerial officer of the Bank in handling the funds. He kept the accounts of the Bank. I considered the President as one of the Board of Directors. The only difference
139 between him and any other Director on the Board was that he presided. Of course the President was expected, in the absence of the other Directors, to be more at the Bank and give more attention to the business of the Bank than any other Director, and, further, to conduct any correspondence ordered by the Directors and of course to sign all notes for circulation.

3 Q. State as near as you ~~can~~ recollect the capital of this

Bank, its corporate name, and whether the Bank during the years 1862 and 1863 received and paid out Confederate money at par, in its general transactions of deposit and discount?

Ans. My recollection is that the capital of the Bank was about $160,000. The corporate name was the "Farmers' Bank of Fincastle." My recollection is that during the years 1862 and 1863 that the Bank received and paid out Confederate money at par.

4 Q. Up to the year 1862, was there much Confederate money in circulation here? And until the last of 1861, was not the currency in circulation here almost entirely Bank notes?

Ans. I should say from my recollection, until 1862, there was not much Confederate in circulation here; that during the year 1861 the money in circulation was pretty much Bank notes. I know that in 1861 the Confederate soldiers were paid off in Bank notes.

5 Q. Was not Confederate money throughout 1862 generally received in payment of debts and for property, and by the most intelligent, judicious and prudent men with rare exception if any?

140 Ans. I should say that it was during the year 1862 received in payment of all business transactions generally. I do not think that it was until after 1862 that I heard of any persons refusing to receive Confederate money, or in 1862 it was quite late in the year.

6 Q. Were you not intimately acquainted with Col. John T. Anderson, with whom you served in the Legislature during the war; if so, state how long you were so acquainted, and what your estimate and that of the puhlic of him, as a lawyer and a man of integrity and of fidelity to his clients?

Ans. I was long and intimately acquainted with Col. John T. Anderson, before and after I served with him in the Legislature, and during that time I regarded him as honorable in all of his deportment and intercourse with his fellow men. And think that he was so regarded by the people whom he represented. As a lawyer he was regarded as a man of strict integrity and as faithful to his client as any lawyer that I ever knew.

7 Q. Was he not generally esteemed a man also of learning in his profession. State also if he is living?

Ans. Yes, sir; Col. Anderson was for many years esteemed as a lawyer of learning and ability, and had a large and lucrative practice for a great many years. He is now dead.

And further this deponent saith not.

GREEN JAMES.

141 *Deposition of John M. R. Sprinkle.*

Col. John M. R. Sprinkle, a witness of lawful age, being duly sworn according to law, deposeth and saith as follows:

1st question by Plaintiffs' Counsel. State your residence, and also where you resided during the war?

Ans. I live in Botetourt County. I lived during the war here in the County at the same place I now do.

2d quest. From whom did you purchase the farm upon which you at present reside?

Ans. From Dr. Wm. M. Woodson.

3d quest. When did you purchase said farm; was it before the war? State the time as near as you can?

Ans. I do not know that I can give the date exactly. I think in March, 1857.

4th quest. State whether Mr. Woodson is now dead, and if so, when did he die, and also whether you had fully paid for said farm before his death?

Ans. He is dead, sir; I cannot be positive as to when he died, perhaps it may have been the fall following the time I bought the farm, it may have been the fall a year after I purchased; I do not remember as to the time certainly. I had not fully paid for the farm before his death.

5th quest. Who qualified as his representative upon his estate.

Note.—(Question objected to by Def'ts Counsel—matter of record.)

Ans. I cannot say as to that matter. I transacted the business with Mr. Glasgow.

6th. quest. What authority had Mr. Glasgow to trans-
142 act business for Dr. Woodson, or what authority did he profess to have?

Ans. I do not know that he ever stated his authority to me, or that I enquired as to what authority he had in the matter. He seemed to have the papers in hand and attending to his business.

7th quest. Did Mr. Glasgow have in possession the evidence of your indebtedness to Dr. Woodson's estate?

Ans. They seemed to be in his possession. If I paid him any money he either gave me up my bond or gave me a receipt for it with a fair settlement of the matter.

8th quest. State if you know who qualified as the representative upon the estate of Dr. Woodson, and also state if Mr. Glasgow at any time told you by what authority he was transacting business for Dr. Woodson?

Ans. I do not know who qualified as the representative of Dr. Woodson's est., nor do I know whether Mr. Glasgow ever told me by what authority he was acting.

9th quest. Why did you transact business with Mr. Glasgow touching your indebtedness to Dr. Woodson's estate, and pay him money due said estate, when you did not know he was authorized to transact said business?

Ans. I found that he had the bonds of that estate against me in his hands. I do not know that he had them in hand all the time, but whenever there was anything paid by me he seemed to have them, and I received the money, and gave me a receipt for it.

10th quest. State whether you offered to pay him money due on claims in his hands during the year 1862 or
143 1863, and whether he refused to receive the money?

Ans. I offered to pay him money, but cannot say when or in what year, but sometime during the war, but I do not now remember the date. He refused to receive it when I offered to pay it.

11th Q. Why did he refuse?

Ans. I do not know why he refused. It was Confederate money, and I suppose that that was the principal objection. I think that he remarked at the time "that he couldn't have correspondence with Mrs. Woodson, as she was absent from here, that he couldn't or didn't feel authorized to receive it, without her authority," I think was about what occurred between us.

12th Q. State whether you did not offer to pay Mr. Glasgow money on more than one occasion.

Ans. Yes, sir, I did.

13th Q. State if it comes within your knowledge, that Col. John T. Anderson was a member of the Legislature in the years 1862 and 1863, and whether he did not make a speech in the courthouse of this county during said time in which he denounced all persons for not refusing to receive Confederate money in the payment of debts, as being the worst enemies in the country.

Ans. I recollect the remark Col. Anderson made; I do not recollect the year. In regard to his denouncing persons as enemies of the country, who would not receive Confederate money, I do not know that he spoke of it as to not receiving it for debts. Just as we came out of the Courthouse, after
144 hearing the speech and while on the Courthouse style of the yard I again asked Mr. Glasgow if he would receive the Confederate money of me. He told me that he would consult his uncle on the subject, and let me know within an hour. And I suppose within an hour he let me know that he could

not take it. I think it was at this time that he gave me as the reason that he could not correspond with Mrs. Woodson. It is my impression that Col. John Anderson was a member of the Legislature at that time. I think that he was a member of the Legislature during the war.

14th quest. State whether it was in consideration of the speech made by Col. Anderson that you made the effort the second time to pay Mr. Glasgow the money you then owed in Confederate money.

Ans. It was owing to the remark of Anderson that I made the effort, thinking that Mr. Glasgow would take the money.

15th quest. Is Col. John T. Anderson the uncle of Mr. Glasgow?

Ans. I do not know anything about that only from hearsay. I have always understood that he was.

16th quest. Did you know Mrs. Woodson, and do you know that she is now the wife of Mr. Glasgow?

Ans. I knew her as the wife of Dr. Woodson, and I now know her as the wife of Mr. Glasgow.

Note.—Counsel for def'ts at this point asked that the whole of the foregoing deposition be *noted as objected to* as irrelevant to the point in issue.

145 *Cross-Examined by Deft's Counsel.*

1st Question. Do you not remember that Mrs. Woodson removed to Memphis, Tennessee, about a year before the war?

Ans. I do not remember as to the time. I heard that she moved there. I was aware during the war that she was in Memphis.

2 Q. From an examination of the receipts in your possession, are you not now satisfied that Mrs, Woodson was the administratrix of Dr. Woodson, and that the payments made to Glasgow was to him as her agent or attorney?

Ans. Yes; that appears to be the fact.

3 Q. Did not the said Glasgow as attorney for Mrs. Woodson receive from you on your land bond, on the 21st day of November, 1862, $1,300 in Confederate funds, and was not the payment of that amount credited on your bond as made on the 21st November, 1862?

Ans. I gave Mr. Glasgow a check at that time of Wm. H. Baily on one of the Banks of Lynchburg for $1,250. I also paid him $50.00 in Confederate money at same time, making in all $1,300, for which I have the receipt signed "G. E Woodson, Adm'rx, &c., by W. A. Glasgow." And same was credited on my bond.

4 Q. Did I not at that time receive all that you offered to pay then?

Ans. Yes, sir.

5 Q. Had I not before that time received any payment proposed by you?

146 Ans. Yes, sir.

6 Q. Was it not a year or more afterwards when I declined to receive further payment in Confederate money and did I not then give as my reason that I could not hear from her, and had not authority.

Ans. As regards *to* the time I cannot say. It may have been a year or more. I kept no account of the time. As to the reason that he could not receive the money, I have already answered that in answer to a former question—that is, that he could not hear from Mrs. Woodson and that he had no authority.

7 Q. When you settled in Botetourt was I not, as ever since, an attorney at law residing in Fincastle. Was I not called on to draw your contract of purchase, and also the deed from Woodson and wife to you as their attorney?

Ans. Yes, sir.

And further this deponent saith not.

J. M. R. SPRINKLE.

Deposition of Benjamin Brugh.

Benjamin Brugh, a witness of lawful age, being duly sworn according to law, deposeth and saith as follows:

1st Question by Plaintiff's Counsel. Where do you reside and where did you reside during the late war?

Ans. I reside in this, Botetourt county, and had my residence in this county during the war.

2d quest. State whether you was indebted to the late

147 Dr. Woodson, and whether Wm. A. Glasgow collected debts due to his estate as his agent, also whether you offered payment to said Glasgow in Confederate money. State fully what you know upon this subject?

Ans. I was indebted to the late Dr. Woodson for the two payments on my farm. I had made the cash payment when I got possession. Mr. Glasgow collected all of the money I paid except a couple of small transactions which I think I had with Mrs. Woodson. I offered a payment to Mr. Glasgow in Confederate money. I went to Mr. Glasgow's office, I think in 1863, I cannot say in what month, and offered payment; I had the money with me. Mr. Glasgow replied to me: "I am acting as agent for Mrs. Woodson; I cannot receive it; she is across the lines, and I cannot have correspondence with her,

and I wouldn't know what to do with it." Is about what passed between us. We may have talked more about it. I know that I was very anxious to pay it. But Mr. Glasgow said that he couldn't take it, as he couldn't hear from her.

3d quest. State as near as you can the time that you offered to make payment to Mr. Glasgow?

Ans. I couldn't name the month. It must have been between the fall of 1862 and the fall of 1863. I was at home during that time, and it was during that time that I offered to pay this money.

4th quest. When did Dr. Woodson die?

Ans. It was, as well as I can recollect it, in the fall
148 of 1857.

Cross-Examined by Counsel for Def'ts.

1st Q. You are aware of the fact, are you not, that Mrs. Woodson removed to Memphis, Tennessee, before the war?

Ans. I cannot say at what time she went to Memphis. I recollect very well of her being in Memphis in the early part of the war. But the exact time of her removal has escaped my mind.

And further this deponent saith not.

BENJAMIN BRUGH.

Deposition of B. M. Allen.

B. M. Allen, a witness, being duly sworn according to law, deposeth and saith as follows:

1st question by Plaintiffs' Counsel. State your residence, and what is your occupation?

Ans. I live in Fincastle. My occupation is that of Clerk of the Circuit and County Courts of Botetourt.

2d quest. Who was the adm'r'x of Wm. M. Woodson, dec'd?

Ans. It appears from the records of the County Court that Grace E. Woodson was.

3d quest. When did she qualify as such, and who were her securities?

Ans. It appears from the same records that she qualified on the 11th day of January, 1858. John T. Anderson and Wm. A. Glasgow were her securities.

4th quest. With whom did said Administratrix afterwards intermarry, and what was the date of said marriage?

Ans. It also appears from the said record that she intermarried with Wm. A. Glasgow on the 21st day of July, 1864.

149 5th Quest. Who qualified as the successor of said administratrix after her said intermarriage with said Wm. A. Glasgow?

Ans. It appears from the said records that Wm. A. Glasgow qualified as Administrator de bonis non of Wm. M. Woodson on the 14th day of August, 1868.

Note.—The counsel for def'ts excepts to the foregoing deposition of B. M. Allen as irrelevant and impertinent.

And further this deponent saith not. B. M. ALLEN.

Deposition of David H. Lipse.

David H. Lipse being duly sworn according to law deposeth and saith as follows:

1st Question. By Plaintiffs Counsel. [The Counsel for the Defendant objected to this witness being introduced on the grounds of incompetency to testify in these causes.] What is your residence and what is your age?

Ans. I live in Allen County, State of Indiana, and I am sixty-eight years old?

2d Quest. Was you one of the Executors of Moses Lipse, dec'd, and did you qualify and act as such, and who was your co-Executor?

Ans. I was appointed as an executor in the will and I qualified and acted as such. My brother Sam'l was my co-executor.

3d Quest. Did you and your brother Samuel both qualify as *as* executors?

Ans We did.

150 4th Quest. Did you and your co-executor sell the real estate of Moses Lipse, and if so state the terms of sale?

Ans. We sold the real estate. The terms was that one-third of the purchase money should be paid down and the balance to be paid in two equal annual instalments.

5th Quest. State whether you, as executor and one of the distributees of said Moses Lipse, have received your share or portion of the said estate?

Ans. I received my portion of the first payment was all that I ever received.

6th Quest. State whether you have ever conveyed by deed of conveyance the land sold by you and your co-Executor Samuel Lipse to the purchaser at the sale made by you as one of the executors?

Ans. I never did. I was not in the country when that work was done.

7th Quest. State whether you have ever, in conjunction with your co-executor Sam'l Lipse, made any settlement of said estate?

Ans. No, sir, I never did. I had nothing to do with any settlement.

8th Quest. State as near as you can when you and your co-executor qualified upon said estate, and give the date of the sale of the real estate as near as you can?

Ans. I think that we qualified in May or June the Spring before, the sale of real estate was in August; I think in 1860.

I think that the personal property had been sold in the
151 Spring previous. I cannot be positive in my mind as to the exact date.

9th quest. Where did you reside during the war? in a word, state where did you reside at the time of the sale and when you moved to Indiana.

Ans. I resided where I now do during the war. I moved to Indiana in 1850 (September of that year). I have lived there at the same place ever since I first moved there (in the same county).

10th quest. State whether you, during the late war, had any correspondence with your co-executor, Sam'l Lipse, or the purchaser of the land sold by you as one of the executors of Moses Lipse, dec'd.

Ans. I didn't have with any person.

(11th question and answer to same excluded.—F. W. R., c'lk.)

12th quest. Had you any part or lot, either directly or indirectly, in the receipt of Mr. Glasgow's check, or did you agree to accept the same, or any part thereof, in the payment of the debts due you as the executor of Moses Lipse, dec'd?

Ans. I had nothing to do with it. I knew nothing about it. It was all done in my absence.

13th quest. Have ever agreed to make conveyance to Glasgow as executor or to Spears of the land sold by you as one of executors of Moses Lipse, or have you ever made or signed any such conveyance?

Ans. I have not.

14th quest. When were you last in this State before this visit?

Ans. If my memory serves me aright, I was here in
152 1874, six years ago now.

15th quest. Were you in Virginia at any time between the sale of the land in 1860 and the year 1874?

Ans. I was not.

16th quest. Did you contemplate bringing this suit in 1874, and why did you not bring it then?

Ans. I contemplated bringing the suit then. I did not bring it then owing to the counsel I got then. I did not bring it until I got other counsel.

17th quest. Did you ever have any conversation with Samuel Lipse, your co-executor, about his settlement and transactions

touching said estate of Moses Lipse, dec'd? (Objected to by def'ts as illegal.)

Ans. I did.

18th quest. When did you have such conversation with Samuel Lipse, your co-executor, touching such settlement and transactions?

Ans. It was in the Spring of 1874, which was the only time I have seen him since the war.

19th quest. State whether you ever called upon Samuel Lipse, your co-executor, for a settlement after the war?

Ans. I did not, from the fact that everything had been squandered. That is, the part that was coming to me, had been confiscated. There was nothing to settle.

20th quest. What reason did your co-executor give for not paying you your distributive share of your father's estate?

Ans. I do not understand that question. The fact is,
153 he had nothing to pay with. The portion that was coming to me (if it had been money) had been confiscated, as I understood it, for the benefit of the Confederacy.

21st quest. Did your co-executor say anything to you about a check Mr. Glasgow had given him; if so, state what he said. (Objected to by deft's counsel as illegal).

Ans. I do not recollect of *him* ever saying anything to me about a check at all.

22d quest. What reason did he give you for violating his father's will, and for conveying property which only he and you could convey jointly? (Objected as illegal by Deft's counsel).

(Foregoing question and answer to same excluded. F. W. R., Clerk).

(23d question and answer to same excluded. F. W. R., Clerk).

24th quest. You have stated that the land was sold in 1860. State the kind of money for which the land was sold?

Ans. I understood that it was sold for current money of the United States. Either gold or silver or its equivalent.

25th quest. In your answer to the 16th question you say you contemplated in 1874 instituting a suit for the recovery of your testator's land, but owing to the advice of the counsel you consulted you did not do so. Please give the name of the attorney you consulted?

154 Ans. J. H. H. Figgat.

26th quest. Was John T. Anderson, Esq., ever counsel for you in this matter, and did you ever have any correspondence with him in regard to said sale, settlement or conveyance?

Ans. He was employed as our counsel in the commencement of the business. I never had any correspondence with him myself, from the fact that I was not in this country and there was no way of getting anything through the lines during the war.

27th quest. You state in answer to the 19th question that the reason you did not call on Samuel Lipes for a settlement was because everything was squandered and lost; how did you first become aware of this fact?

Ans. I became aware of it when I came to this country, and enquired after it in 1874.

28th quest. Please state the name of the person who gave you the information?

Ans. Samuel Lipse himself.

(29th question and answer excluded. F. W. R., Cl'k).

Cross-Examined by Deft's Counsel.

1st question. Which of your *B*rothers and *S*isters are now living? Name them and their residences.

Ans. Moses Lipes is living. He resides in Missouri, Lewis county, I think. I have a sister Catharine living in this county (wife of Levi Huff) and myself are all that are now living.

2 Q. I understand you to say that all the heirs received their parts of the first payment on the land Am I
155 correct?

Ans. I cannot testify as to more than my own share and the share of my brother Christopher's heirs, which passed through my hands.

3 Q. Have you not understood from your brother Moses that his share was paid to him of the payment which was paid down before the war?

Ans. I have never understood anything about it.

4 Q. Am I to understand then that you have no knowledge of any part of the first payment having been distributed except your and Christopher's parts?

Ans. I have no knowledge of it.

5 Q. Were not you present when the contract of sale to Spears was made, and was it not made privately some time after it was offered publicly?

Ans. Yes, I think the sale was made the next day after it was offered publicly, although I was not present at the time. I did not expect that it would be made at that time and I had left. I think, I am not positive just as to whether it was made the next day, but it was shortly afterwards.

6 Q. Was not the contract drawn by your Attorney, Col.

Anderson, and signed by both Samuel and yourself, the executors?

Ans. Well, that I do not know. I did not sign it. I do not know who drew the contract.

7 Q. How long were you in Virginia in 1860?

Ans. I cannot tell that. I was here three times during that year, I think. As to how long I staid I cannot state.

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8th Q. Were you not here on the 10th September, 1860?

Ans. Well, sir, I cannot say. My memory does not serve me. I was not here when the contract of sale was made, nor afterwards. I had given my consent to my brother Samuel to make the sale at the price at which it was bid off, or about that price somewhere.

9th Q. How long were you in Virginia in the year 1874?

Ans. I was here from about the 21st of February to the middle of April, I think.

10th Q. Were you not a good deal with your brother Samuel during that time, and have frequent talks with him about the estate matters?

Ans. I was with him about an equal portion of the time with my other friends here. Of course I had conversations with him in regard to the estate.

11th Q. In giving his reasons for receiving payment for the land in Confederate money, did he mention to you that Glasgow, Ex'or, had offered him payment of the last bond at his house, and that he declined to receive it, and that he took advice of counsel what he should do, and that being advised he went to Glasgow's office afterwards, told him that he had concluded to receive the payment if he was still prepared to make it, and that Glasgow then settled it?

Ans. Well, he told me that Mr. Glasgow had tendered the money at his house but that he refused to take it. He didn't say anything about the bond as I recollect of. I do not recollect as to advice of counsel, nor do I not recollect as to whether he said anything as to the latter clause of the question.

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12 Q. Did he, during that time, make any charge that Glasgow had cheated or defrauded or in any way deceived him?

Ans. I do not know that he did.

13 Q. Did you ever have any acquaintance with Glasgow until when you were in Virginia in 1874?

Ans. No, sir; I never saw him before that I know of. I do not think that he was in this country before I left it. If he was I never heard of it.

14 Q. When you were here in 1874, just before you left did

you not tell Glasgow that you had taken counsel and that from the best information you got that if you set up your claim it would be against your brother Samuel, and that you would loose your claim before you would trouble him about it?

Ans. I told Mr. Glasgow, if I recollect right, that if in case the course my brother Samuel had pursued would hold him responsible for the Confederate money he had taken, that I would never distress him in his old age for my part, that I would rather lose my portion than distress him.

158 15 Q. Had you not, at that time, been advised that your brother Samuel was responsible to you?

Ans. Well, I had been advised that it was thought that he would be responsible to the heirs.

16 Q. Did not Samuel tell you that some of the heirs urged him to collect the money and divide it?

Ans. I think that he did.

17 Q. Did you not understand from him that Huff did?

Ans. No; I think that I understood from him that Huff opposed it.

18 Q. Did he not tell you that all of the heirs here agreed to receive it, and did receive their portions?

Ans. No; I dont recollect as to whether he told me anything about that. I never thought I would be called on as to that and did'nt charge my memory with it or else I might have remembered it. I do not know, but I presume that they did receive their parts.

19 Q. Did he not go with you to the Clerk's Office and show you the records of his settlements before Commissioner Logan and how he had paid out the funds?

Ans. He did not.

20 Q. Did you not examine his settlements on record there?

Ans. I examined some things there. I do not know that I examined everything there. I do not think that I did.

159 21 Q. I understand that when you left Virginia in 1860, that you authorized your co-executor, Samuel, to sell the land at the price mentioned by you, and that when the sale was made that you did not take any part in receiving the money, but left that to Samuel, and that you knew nothing of the distribution of any except yours and Christopher's part of the first payment and that came to you from Samuel?

Ans. That is so. I mean that that is correct.

20 Q. What relation does Wm. Lipse, your co-complainant in the original bill, bear to Moses Lipse, dec'd; where does he live, and where was he during the war?

Ans. I presume he is a son of Samel Lipse and grandson of Moses Lipse, dec'd. As to where he was during the war I do

not know. Samuel also had a son, Moses Lipse, who is also one of the Complainants. I do not know from my own knowledge where he resides, nor do I know where his brother, Wm. Lipse, lives.

21 Q. Please state if you know, from which of your brothers or sisters each of the other complainants in the original bill was descended; where each resided during the war, and where now resides?

Ans. Samuel Lipse had two sons named George Lipse and Jacob Lipse. I do not know where they resided during the war—most likely in the Confederate States. I do not
160 know where they live now. Isaac Custer was a son of my oldest sister, Susannah. He lived in Roanoke county the last I knew of. I do not know where he lived during the war. Josephus Lipse is a son of my brother Joseph. He lives in Henry county, Indiana, and lived there during the war. Hetty McClure is a daughter of Joseph Lipse (my brother). She lived in this county during the war, as I am informed, now in *Ind.* James Craft is a son of my sister Polly Craft, lives in Tennessee, and I presume lived there during the war, so far as I know. Moses Lipse is my brother, lives in Missouri, lived there during the war. Montgomery P. Boreing is my brother-in-law, married my youngest sister Ann (who is dead), lives in Tennessee, as I understand, and lived there during the war. James M. Boreing and John W. Boreing are sons of Ann Boreing. I do not know where they live now nor where they lived during the war. Mary R. Hunter is a daughter, I presume, of Ann Boreing. I know nothing of her. I do not know anything either of Ellen B. Scott, nor Susan E. Keplinger, nor Virginia A. Keplinger, nor Florena E. Boreing. If David Lipse is D. D. Lipse he is a son of my brother Christopher, and lives in the same county I do—Allen county, Indiana. My youngest brother Daniel had a son Christopher Lipse, and I suppose that this Christopher, one of the complainants, is his son, if so, he lives in this county, and did during the war.

22 Q. Please state when and where each of your de-
161 ceased brothers and sisters died according to your best recollection?

Ans. Samuel Lipse died in this county I suppose about 3 or 4 years ago. Daniel died in this county I suppose some eight years ago. Barbara Brownlee, I understand, died in this county last week. John Lipse died in Craig county, Va., twelve or fourteen years ago. Joseph Lipse died in this county in 1838 or 1839. Susannah Custer died in Roanoke, Va., some 14 or 15 years ago I guess. Sam Boreing died in Tenn. some three

years ago I understand. Polly Craft died in Tenn. about the same time Sam Boreing died. Christopher Lipse died in Allen Co., Ind., some 20 or 21 years ago.

23 Q. What are the names of the children of Christopher Lipse, dec'd?

Ans. Andrew Lipse is the oldest; Joel Lipse is the second; Rebecca Lipse is the third; D. D. Lipse is the fourth; Julia Ann is the fifth, who are all of his children.

24 Q. Which died first, Moses Lipse or his son Christopher?

Ans. I cannot say.

Re-examined.

1st Q. On cross-examination I think you say that Samuel Lipse told you that some of the heirs wanted him to make collections and make distribution. Did he tell you which of the heirs made this request?

Ans. I do not think that he did. I have no recollection.

162 2d Q. Did he speak of the home heirs or of the non-resident heirs?

Ans. He must have had reference to the home heirs.

Re-Cross-Examined.

1 Q. In answer to the 16th question on your examination in chief you state that in 1874 you did not bring suit, owing to the counsel you got then, and did not bring it till you got other counsel. Please state now from whom you have since gotten counsel and in what respect they differed from the advice you had before?

Ans. I have received counsel from Mays & Mays. The difference is that the counsel that I had before, his impression seemed to be that if suit was brought it would fall upon brother Samuel. And the latter counsel is just the reverse, that is that it would fall upon the Executor of Spears' estate, or Spears' estate, and that they thought that they could recover it. All that was paid in Confederate Script.

2 Q. Did you apply to them for advice in 1874?

Ans. I did not.

3 Q. How did you come afterwards to counsel with them?

Ans. Well, there was a portion of the heirs that threatened to prosecute Bro. Samuel and myself. I cannot tell exactly. I got notice from Mays & Mays that such was the case; that is, that we were threatened to be prosecuted for not prose-

163 cuting a suit for the money was the reason why they threatened us I suppose.

3 Q. Did not Mays & Mays propose to you to undertake to prosecute the suit against Spears' Ex'or?

Ans. Yes, I think so.

4 Q. State as near as you can the terms. Did they not propose to undertake it and pay all the costs and expenses of the suit, if the 12 distributees would each pay them $12 and give them 30-100 of whatever they might recover?

Ans. I did not understand it so. They agreed to pay the costs as I understand it, what it would cost to get it into Court, for that each of the heirs were to pay $12.00. That is the costs accruing here getting up the papers. The latter part as to 30 per cent. is correct.

5 Q. Then you do not understand that the $12 paid was to clear you of the costs?

Ans. Not of the costs of the whole suit in case we lost the case.

6 Q. Was your contract in writing?

Ans. It was.

7 Q. Where is it; will you show it?

Ans. It is in Mr. Huff's possession, one copy of it. The other is in Mr. Mays' office.

Re-Examined.

1st Q. Did you not hear from some of the home heirs, say Mr. Levi Huff, before you communicated with Mays & Mays?

Note.—Objected to as leading.

164 Ans. Yes, I think that I did.

2d Q. Have you ever had any correspondence with Mays & Mays, and was not this suit brought before you heard from them?

Note.—Objected to as leading.

Ans. Well, I think not. I have had correspondence with Mays & Mays. I have the impression that the suit was not brought until after I had heard from them. That is, not until after I had had correspondence with them.

3d Q. State whether or not you or some of the non-resident heirs did not constitute and appoint Mr. Levi Huff your attorney in fact to examine and institute this suit now depending, and whether the contract with Mays & Mays and Col. Hansbrough was not entered into by said Huff and said attorneys, and whether you and said heirs have not agreed to the contract entered into by your att'y in fact, Huff, and the counsel mentioned?

Ans. We did appoint Huff as our att'y in fact to institute suit and contract for counsel, and we have agreed to that contract.

4th Q. State whether Mr. Huff has not from time to time made known to you the contract entered into, and kept you posted as to the proceedings in said suit?

Ans. He notified me as to the contract. As to how many times I do not know or recollect.

5th Q. State whether Mr. Huff had not informed you of the counsel that he had employed and given you their
165 names, and whether you have not since corresponded with said counsel?

Ans. I think that he did. I have had a letter from Hansborough since and from Mays & Mays, and answered them both.

6th Q. How long was it before this suit was brought that you and Mr. Huff had correspondence about bringing this suit, and did not Mr. Huff inform you the suit was threatened against you and your co-executor?

Note.—Objected to as leading.

Ans. I cannot say the exact time. Huff did inform me that suit was threatened against me and my co-executor.

7th Q. State whether this correspondence with Huff was not long before you ever heard of Mays & Mays.

(Objected to as leading).

Ans. It was before, but I have no recollection how long.

Re-Cross-Examined.

1. By whom was the suit against you and Samuel threatened?

Ans. By some of the heirs, as I understand it, in the Confederate States. By my brother in Missouri as I have been informed.

2. Was not this suit undertaken at the instance and in behalf of Huff and the other resident heirs, as well as for yourself and the non-residents; and were not all to contribute to bear its expenses?

Ans. To bear the expense of instituting the suit we were all to contribute equally. Of course it was undertaken
166 at the instance and in behalf of us all.

And further this deponent saith not.

D. H. LIPSE.

Deposition of James M. Figgat.

James M. Figgat being duly sworn deposes and saith as follows:

1st question by defendant's counsel:

Please state your age and residence.

Ans. My age is sixty-nine the 8th of June, 1880. My residence is in Fincastle.

2d Q. State what opportunities, if any, you had of being

acquainted with the management and operations of the Fincastle Savings Bank during the years 1862 and 1863?

Ans. I was a stockholder in that Bank from its inception till its close, and represented four other stockholders of that Bank, members of my family, during that time. I generally was one of the Directors during that time. Sometimes I withdrew as a Director for a year or two. I was very intimate with the Treasurer and other officers of the Bank, and generally knew what business it was doing. And had access at all times to the books and knew about as much about the business of the Bank as the Secretary.

3d Q. What kind of currency was received and paid out by the Bank?

167 Ans. From the time that Confederate money was introduced into the State, in 1861 and 1862, the Bank received either Virginia money as Confederate money as tendered by persons in payment of their notes and continued to receive Confederate money during the years 1863 and 1864 till the close of the Bank. At the last meeting of the directors of the Bank, held the 20th day of April, 1863, an order was made directing the Treasurer of the Bank to publish notice to the debtors of the Bank for four weeks in the Fincastle Express, to come forwards and pay up their indebtedness, which a number of them complied with and came forwards and paid up their indebtedness to the Bank in Confederate money. This was continued up to the 31st day of March, 1864.

4 Q. State anything you may know of a note held by the Savings Bank on Levi Huff, and whether if it had been offered at any time by him, payment would have been received in Confederate money?

Ans. Levi Huff, with J. K. Pitzer as his endorser, had a note in the Fincastle Savings Bank, in 1863, I think for fifty-three dollars and ten cents, as it appears on the books, which note could have been paid at any time up to the 21st of April, 1863, in Confederate money, at which time it was transferred from the Bank to John F. Hickok, one of the stock-

168 holders in payment of his stock.

5 Q. State, as far as you know, to what extent Confederate money was current during the entire year 1862, in paying debts or purchasing property?

Ans. During the year 1862 I was doing what I could in aiding the Confederacy. In purchasing horses for members of the Company from this place, and for my sons that were in the war, and in purchasing supplies for the soldiers' families, during which time I handled a great deal of money, and to the best of my recollection I handled nothing, either in receiving or pay-

ing out during this time, except Confederate money. And no person raised a single objection to receiving Confederate money for anything which they had to sell, of whom I bought anything. And all of my purchases made during this year was made for prices but a very little in advance of similar purchases made in the years 1860 and 1861. As to paying debts, I do not know that I ever heard of a single individual refusing to receive Confederate money for any debt contracted before the war, until after the first of 1863. And I do know that Col. Thomas N. Burwell received several thousand dollars in Confederate money for a balance due him on the purchase of his farm by Brumbaugh and Pitzer previously to the war, in Confederate money. Some eight or ten thousand dol-
169 lars. Jacob Obenchain received Confederate money also for land sold by him previously to the war. I could cite a great many cases in which Confederate money was paid for land sold previous to the war. And also in which land was sold for Confederate money, if I should think a little.

Cross-Examined by Plt'fs' Counsel.

1st Q. You have referred to the Savings Bank Books, from which it appears that Thomas G. Godwin was the President of said Bank during the years 1856, 7, 8, 9, and 1860, and that the last meeting of the Directors was held in August, 1860. How do you account for the tranctions of the Bank from 1860 to 1864?

Ans. The last meeting of the Directors of the Bank was not held in 1860. I did not so state it. But I said the last meeting of the Directors was held in 1863. The last meeting of the Stockholders was held on the 29th day of January, 1863, for the purpose of electing a new Board of Directors, on which day they did elect a Board of seven Directors, at which time Mr. Godwin resigned as President and I was elected in his place. And on the 20th day of April, 1863, the Directors met and an order was made directing the Treasurer to pay to the stockholders a certain amount due on their stock not in full, at which meeting the order referred to in my former answer, di-
recting notice to be published requesting all persons
170 indebted to the Bank to come forward and pay up promptly, was made; which notice was continued to be published (in the Fincastle Express, a semi-weekly newspaper published in Fincastle) from the 21st of April, 1863, up to the 15th day of Sept., 1863. I here hand you the notice as published. At this part the witness handed to Court a copy of notice cut from the newspaper, which is herewith filed, marked EXHIBIT A

EXHIBIT A.

Jas. M. Figgat's Deposition.

FINCASTLE SAVINGS BANK.

This Institution having closed operations, all persons indebted to it are required to pay up promptly.

By order of the Directors.

ap 21-4t F. WOLTZ, Treas'r.

Published to Sept. 15, '63, semi-weekly, from Apl. 21, '63.

2d Q. How was the Bank managed, and under whose control was the Bank, from last meeting of the Directors held the 2d of August, 1860, until the meeting of the stockholders of said Bank held on the 29th January, 1863, and the meeting of the new Directors the 20th of April, 1863.

Ans. The Bank was under the entire control of the President, Treasurer and Directors of the Bank from August, 1860, to the 29th of January, 1863. And ~~very~~ little if any business was done in and through the bank between those dates,

171 except what the Treasurer attended to.

3d Q. You say in answer to a former question asked you, that notes were discounted and money received by the Bank in Confederate money, 1862–'63. How was this done *how was this done* when there was no meetings of the Directors?

Ans. I never stated that notes were discounted during the years 1862–'3 nowhere in my statements. Nor do I think that there were any notes discounted during the year 1861, 1862 and 1863. There was not much business done, as I have stated, except to receive payments from the debtors, either by curtailments or in full, or to pay out money to depositors, all of which was done and could be done by the Treasurer under his official duties, without a meeting of the Board of Directors being held every and each week.

4th quest. State if you know anything about Mr. Levi Huff making an effort to pay a note that he was due said Bank in Confederate money, in the year 1862 or in 1863.

Ans. I do not know that Mr. Huff ever proposed to pay off his note during that time. But I do know that had he tendered the money to the Treasurer of the Bank at any time up to the 21st of April, 1863, that the money would have been received and his note discharged. It was on that day that John F. Hickok drew that note out of the Bank in pay-

172 ment of his stock and got entire control of that note.

But other debtors to the Bank paid in money after that time and up to May, 1863, (May 18). And stockholders con-

tinued to receive Confederate money in payment of their stock up to the 31st of March, 1864. Upon examination I find that Confederate money was received in payment of notes up to the 23d of June, 1863, and paid out to stockholders to March, 1864. There was nothing else to pay with, and people generally were glad to receive Confederate money and took all they could get the first of the year 1863.

5 Q. You say you do know that if Mr. Huff had offered to pay his note in Confederate money in 1862 or 1863 before his note was transferred that the money would have been received. How do you know this fact?

Ans. I know it from others paying their notes off to the Bank, which were of a similar character, during the entire period.

6 Q. State whether you was one of the Directors in the Savings Bank at any time previous to the last meeting of the Directors, held 2d of August, 1860.

Ans. I do not think that I was. I do not recollect certainly, except at the organization of the Bank I think that I helped to organize it. I was a stockholder all of the time, so also my wife, my sons Charles and James.

And further this deponent saith not.

JAMES M. FIGGAT.

173 *Deposition of Thomas G. Godwin.*

1st question by def'ts counsel. What is your age and residence?

Ans. I am in my seventy-second year. I live in Fincastle.

2d Quest. State what opportunities you had of being acquainted with the operations of the Fincastle Savings Bank during the years 1862 and 1863?

Ans. I was the President of the Bank until the 29th of January, 1863; I had frequent intercourse and conversations with Mr. Woltz, the Treasurer of the Bank, and soon after the time at which I ceased to be President, on up to the time a distribution of the funds was made. I was also one among the largest stockholders in the Bank.

3 Q. What kind of currency was received and paid out during 1862 and 1863?

Ans. There was no other kind except that in general circulation—"Confederate money." The debts due the Bank was taken in that kind of money.

4 Q. If Levi Huff had offered Confederate money in payment of a debt due by him to the Bank, at any time previous to the winding up of the Bank, in April, 1863, would it have been received or refused?

Ans. I suppose that it would have been received. It was received of other people, and I know of no reason why a difference should be made in his case.

5 Q. Have you ever before heard of any one during
174 1862 or 1863, having been refused the privilege to pay to that Bank, a debt due it in Confederate money?

Ans. No, sir; that was the only money we had.

Cross Examined by Plaintiff's Counsel.

1st quest. The last meeting of the Directors of the Fincastle Saving's Bank was signed by you as the President of said Bank, on the 2d day of August, 1860. State whether you was ever in any other meeting of the Directors after the 2d of August, 1860.

Ans. There seems to be no records of any other meetings. I do not suppose that I was in any regular meeting of the Directors. But I was the President of the Bank until my successor was elected, which was in 1863.

And further this deponent saith not.

THOMAS G. GODWIN.

Deposition of Jas. M. Figgat Renewed (*See p.* 165).

Jas. M. Figgat was recalled and answered and deposed as follows:

1st question by def'ts' counsel. Do you know what became of the records and papers of the Farmers' Bank of Fincastle?

Ans. I know that the books and papers of the Farmers Bank of Fincastle were in the Banking-house of the Bank of Fincastle, or moved into the law office of Wm. A. Glasgow, and I presume were all burned in the conflagration of
175 May, 1870, as I have not seen or heard of them since. I was present at the fire and understood at the time that all were lost in the fire. I know that nothing was saved out of that house, or if there was I know nothing of it. It was thought that that house would be saved, but it finally was burnt with its contents.

And further this deponent saith not.

JAMES M. FIGGAT.

Deposition of John F. Hickok.

John F. Hickok, being duly sworn, deposeth and saith as follows:

1st Question by Def'ts Counsel. What is your age and residence?

Ans. My age is fifty-five; my residence is in Fincastle?

2d Q. Please answer the question first propounded to Capt. Jas. M. Figgat?

Ans. I have always understood that they were all burned in the fire of 1870, in which this town was pretty much destroyed.

3d Q. Please state whether a note of Levi Huff for some fifty odd dollars was transferred to you on account of your stock in the Fincastle Savings Bank, and if so at what date such transfer to you was made?

Ans. I do not exactly know from my memory at what date,
but I find by refreshing my memory from the record
176 before me that it was in 1863, (April 21). I know from
my recollection that it was in 1863, (but had forgotten the date of month), that such a note of Mr. Levi Huff came into my possession on account of my stocks in the Fincastle Savings Bank; that is in part payment of my stock. I was going into the army at that time and wanted my affairs with the Bank fixed up was why I was paid off at that time. I do not now know whether I just went to the army during that month or the next. It was either the last of April or 1st of May that I went to the army.

4th Q. Did Huff at any time offer you payment of that note in Confederate money, and if he had done so in that year would you have received it or not?

Ans. I certainly would have received it in Confederate money, from the fact that I had some money deposited in the Farmers' Bank of Fincastle at that time and with some gold and silver which I had in my possession at that time I placed it, the gold and silver, with the deposit I had, in the Farmers' Bank of Fincastle and took Confederate Bonds to the amount of eight hundred dollars for the same. He never offered payment to me in Confederate money or any other kind of money. He frequently promised to pay, but never did. I finally sued him after the war.

And further this deponent saith not.

JOHN F. HICKOK.

177 *Deposition of William Aunspaugh.*

William Aunspaugh being duly sworn, deposeth and saith as follows:

1st question by deft's counsel.

What is your age and residence?

Ans. I am about fifty-five. My residence is in Fincastle.

2d Q. Were you engaged in 1863 in publishing a newspaper published in Fincastle called the *Fincastle Express?* Was it a weekly or semi-weekly paper, and was there any

other newspaper at that time published within the bounds of Botetourt?

Ans. It was a semi-weekly paper, and there was no other paper published in the County of Botetourt at the time.

3rd Q. State whether an advertisement was published in that paper at that time inviting the debtors of the Fincastle Savings Bank to come forwards and pay up their debts. If so, examine the paper filed by James M. Figgat with his answer and state whether that is the advertisement, and if so, state when inserted and how long continued in that the paper?

Ans. There was such an advertisement in that paper, and this is the advertisement, first inserted the 21st of April, 1863, and continued till the 15th of September, 1863, at which time it was taken out.

And further this deponent saith not.

WILLIAM AUNSPAUGH.

Deposition of William McCreery.

Wm. McCreery, a witness of lawful age, being duly
178 sworn according to law, deposeth and saith as follows:

1st question by defendant's counsel.

State your age, residence and occupation.

Ans. My age is fifty-eight. My residence is Pulaski county, West Virginia.

2d Q. Have you at any time resided in Fincastle, and if so, when and how were you occupied whilst there?

Ans. Yes, sir; I lived in Fincastle from 1856 to 1865. I was Cashier of the Farmers' Bank of Fincastle.

3 Q. Had you any acquaintance with Levi Huff, one of the parties to this suit, and can you recall any business transactions he had with you as Cashier, and have you any recollections of his refusal at any time to receive Confederate money for a check presented by him?

Ans. I may have had, but I don't recollect it. I have no recollection of having any business transactions with him, or that he at any time refused to receive Confederate money.

4th Q. In the deposition of Levi Huff taken in this case, he stated that in February, 1869, or about that time, he presented to you as Cashier at the counter of the Bank a check drawn in his favor by Samuel Lipse on your Bank, that you offered him payment in Confederate money, and that he declined to receive it. In the 28th question propounded to him he was asked, "Were threats made by any of the persons present towards either you or Mr. Custer for not willingly receiv-
179 ing the money; if so, who made the threats and what were they?" to which question Levi Huff answered:

"Yes, sir; there were threats made to both of us by Mr. McCreery and Col. George Wilson after Joel Custer was criticising the money and I complaining that I couldn't pay my honest debts with it; that we were badly swindled by some one. McCreery remarked first that such men as we were, that they having reference to the authorities had houses built for such men as you are, is about what McCreery said. Col. George Wilson remarked that every one *as* such men ought to be confined in prison." Have you recollection of any such matters as are therein alleged?

Ans. I have not. If I had made threats or would have threatened to have persons imprisoned I certainly would not have forgotton. I had neither motive nor interest in so doing. It made no difference to me whether Confederate money was received or not.

5th Q. Did you ever at any time make threats, such as are there stated, against any one on account of his declining to receive at the Bank anything that may have been offered?

Ans. I did not.

6th Q. If any serious objection to the receipt of money at the Bank about Feb., 1863, had been made and persistently refused, do you not think that you would have some recollection of it now?

Ans. I think it very likely that I would.

180 7th Q. Joel Custer, a witness examined in this case, in answer to the 3rd question propounded to him, says: "That about the same time he presented a check to the cashier, and the cashier presented a species of money (he called it money). I took up the money in my hand and read it, &c., and asked what bank it was on. He, meaning the Cashier, couldn't answer me, and hasn't answered me yet. I told him that it wasn't money, that it wasn't matured for two years from the face of the bond, and I held up my printed check on the Bank of Fincastle in my hand and said, this is the kind of money my father directed me to receive, and said I will not receive that money you offered to me. The Cashier became a little agitated and said to me in reply, that we have a house up here on the hill, with iron bars across the windows, for you if you do not take this money. I being overpowered, and from the threat of being imprisoned, as I supposed, took the money compulsorily." Please state whether such things ever occurred as I have thus recited, and if anything like it had occurred whether you would not recollect it?

Ans. I do not think anything of the kind occurred. I think that if it had occurred that I would recollect it.

8th Q. In answer to the 1st question when re-introduced,

Feb. 11th, 1880, Levi Huff, among other things, says:
181 "The time Mr. McCreery attacked me as disloyal and deserving imprisonment for contending for Fincastle money, Glasgow was not present then, neither were Custer nor Lipes." Please state whether you ever on any occasion during the war attacked Levi Huff as disloyal and deserving imprisonment for contending for Fincastle money?

Ans. I never did.

2d Q. State whether during 1862 and 1863 it was a usual thing or a rare exception for persons to refuse Confederate money at the counter of the Bank?

Ans. It seems to me that it was a rare exception; it has been so long that I do not remember all of the transactions of my business.

Cross-Examined.

1st question by Plaintiff's Counsel. You state that you were cashier of the Bank from 1856 to 1865, state who was the President of the Bank during your term of office.

Ans. 1st Mr. James McDowell and then Mr. Glasgow. McDowell, I think, died in 1858. I do not remember exactly. Sometime after that Mr. Glasgow was elected and continued, I think, from about 1859 to 1865 to act as President of the Bank.

2d Q. State whether Mr. Huff did not at one time present to you as Cashier of said Bank a check for money. State whether you did not offer to pay said check in Confederate money, and whether he declined to receive the Con-
182 federate money, whether you did not then promise Mr. Huff to aid him in getting such money as would enable him to pay his debts?

Ans. I have no such recollection. If I had promised Mr. Huff to get such money I would have done it.

3d Q. Do you recollect that Mr. Samuel Lipse had money to his credit in your Bank upon which he gave checks? If so, state who deposited that money to the credit of Mr. Lipse.

Ans. He may have had. I do not recollect, nor do I recollect who placed it to his credit.

4th Q. State whether you have any distinct recollection of Mr. Samuel Lipse having money or financial transaction with your Bank?

Ans. I have no distinct recollection.

5th Q. When did that Bank cease to do business?

Ans. In 1865.

Re-examined by Defts' Counsel.

1st Q. Since your residence in West Virginia, please state

whether you have served the public, and if so, how and at what periods?

Ans. I was a member of the Constitutional Convention in 1872, a member of the Legislature of 1879, is all.

2d Q. Please state whether, during your residence in Botetourt County, you became well acquainted with the late John T. Anderson, who appears to have been counsel for Lipes's executor; and from your acquaintance with him in what estimation he was held as a man of integrity and fidelity to his clients?

183 Ans. I was well acquainted with Col. Anderson whilst I resided in Botetourt County. He was a man regarded as of the highest integrity.

3d Q. Please state whether you attended at this place to give your deposition at the request of the defendant Glasgow, Ex'or, and what is the distance by the horseback route from thence here; and also how many days you have been waiting the taking of your testimony at this place?

Ans. I attended at the request of Glasgow, Ex'or, &c. The distance is about 120 miles. I came here Friday night and have been here since. This is the 4th day not including Sunday.

And further this deponent saith not.

WM. McCREERY.

Deposition of Lewis Linkenhoker.

Lewis Linkenhoker, being a witness of lawful age, was introduced by the Plaintiffs Counsel, who being duly sworn according to law, deposeth and saith as follows:

1st Question by Plaintiffs' Counsel. What is your age and residence, and what is your occupation?

Ans. I am about 59 years old; I reside in the county of Botetourt and am a farmer.

2d Q. State whether you were acquainted with Mr. Samuel Lipse and if so how long were you acquainted with him?

184 Ans. I knew Mr. Samuel Lipse from the time I was a little boy up to his death, which occurred three or four years ago to the best of my recollection.

3d Q. State whether or not you had business transactions with him and also speak of his business qualifications?

Ans. I frequently had business transactions with him, and as to his business qualifications he was a man of very ordinary education and knew but a very little about financial transactions.

4th Q. State if it comes within your knowledge if he was one of the executors of his father's estate, (I mean Moses Lipse's

est.), and whether he was in the habit of consulting with you in and about the management of the estate?

Ans. I knew the fact that he was one of the executors or administrator (I do not recollect which) of that estate. I cannot say that he consulted with me about the management of that estate. I recollect that he talked with me upon several occasions about the estate, but I do not think he would have been controlled by anything that I would have said. I was not his counsel.

5th Q. When did Moses Lipse die? and when did Samuel Lipse qualify as his Executor, also whether he was the sole executor, and if not who was his co-executor?

Ans. I cannot state exactly when Moses Lipse did die. It was sometime before the war though; nor can I state
185 when Samuel Lipse qualified as executor. My recollection though is not long after the death of Moses Lipse. His brother, David H. Lipse, was his co-executor.

6th Q. State whether you were at the sale of Moses Lipse's personal and real estate as made by his executors, and when said sales were made. State the month and year as near as you can?

Ans. My recollection is that I was at the sale of the personal property. Whether I was at the sale of the real estate I cannot say. I cannot state the time, I think in 1858 or 1859, I am not certain. My recollection about dates is very bad.

7th Q. State any conversation you may have had with Samuel Lipse about Confederate money that was offered to him in the payment of debts in Confederate money in payment of debts contracted before the war?

Objected to as illegal.

Ans. Mr. Lipse spoke to me during the war sometimes, and told me that he had received Confederate money in payment of the land belong to Moses Lipse's estate, but that he would not have received it if he had known that he was not obliged to take it. His conversation with me was about this. He said they said that he was compelled to take it, and he said he would be taken up if he did not receive it.

8th Q. What estimate did Mr. Lipse put upon Confederate money?

Ans. That would be hard for me to tell. He spoke
186 of its being worthless.

9th Q. State whether or not Mr. Lipse ever informed you that Mr. Glasgow, as the agent or executor of Mr. C. C Spears, ever offered to pay him in Confederate money for the real estate that had been sold by the Executors of Moses Lipes to the said Spears? (Objected to as illegal.)

Ans. He did.

10th Q. From your acquaintance with Mr. Lipse state whether in your opinion he would have known the difference in receiving the Confederate money from Mr. Glasgow or taking his check on the Bank of Fincastle, when said Bank had only Confederate money, Confederate money being the only money then in circulation?

Ans. I do not know whether he would have known the difference or not. Mr. Lipse was a man of common sense, but was a very dull man in regard to money matters or financial transactions.

11th Q. Did Mr. Lipse inform you in any of the conversation he had with you about this estate, that Mr. Glasgow had been at his house and offered to pay him in Confederate money for the land sold to C. C. Spears by Moses Lipse, Exexutor?

Objected to as illegal.

Ans. I do not recollect that he told me that Mr. Glasgow had been at his house. My recollection is that the conversations I had with Mr. Lipse about the matter was after
187 he had received the money from Glasgow. The reason that I think it was after he had received the money from Mr. Glasgow, is that if it had been before he received it I would have told him that he was not obliged to take Confederate money in payment of that land. I was lawyer enough to know that, and would have told him.

12th Q. Did Mr. Lipse at any time tell you that he had refused to take Confederate money from Mr. Glasgow for the sale of this land?

Ans. He told me that he did not want to take the money, but that he had taken it; that they made him believe that he was compelled to take it. I think I had already answered that.

13th Q. State whether in your opinion Mr. Lipse had any financial talent. Whether he knew the difference between checks and drafts or the difference between negotiable notes or bonds or promissory notes.

Ans. I do not think he did, sir.

14th Q. State if Mr. Lipse ever informed you that money had been placed to his credit in Fincastle Bank, and who placed it to his credit? (Objected to as illegal).

Ans. I cannot recollect, sir; I think in these conversations he did mention something about transactions he had with the Bank. But I distinctly recollect that he told me that he had received the money from Mr. Glasgow, as to whether through the Bank or not I cannot now say.

Cross-Examined.

188 1st Q. In answer to the 7th question you say that sometime during the war Samuel Lipse told you that he had received Confederate money in payment for the land, but that he would not have received it had he known that he was not obliged to take it, and add "he said, they said, that he was compelled to take it, and he said that he would be taken up if he did not receive it." Please explain who is referred as *they that* said he was compelled to take it.

Ans. I cannot say who he referred to.

2d Q. Did you ever hear him say that either Spears or his Executor, Wm. A. Glasgow, had at any time told him that he was obliged to take Confederate money for the land or that he would be taken up if he did not receive it?

Ans. No, I cannot say that he did. He spoke of the matter and said *they*. Who he referred to I cannot say.

3d Q. Does it not come within your knowledge that some of the distributees of Moses Lipse, dec'd, were urgent that he should as the bonds fell due, collect them in the currency and make distribution without delay?

Ans. I do not recollect anything about that matter. He may have said something about that to me, though I do not now recollect it.

189 4th Q. In the 10th question you are asked "whether in your opinion Samuel Lipse would have known the difference in receiving Confederate money from Mr. Glasgow or taking his check on the Bank of Fincastle when said bank had only Confederate money, Confederate money being the only money then in circulation." Be kind enough to explain what would have been the difference.

Ans. To me it would have been no difference.

5th Q. Did not Samuel Lipse have sense enough to know that Confederate money in 1862 was not a lawful tender for the payment of a bond executed in 1860; and did he not, in your opinion, accept of payment in Confederate money in a disposition to confirm in his conduct to what appeared to be the general sentiment and practice of the people around him?

Ans. Samuel Lipse was not void of common sense. But whether he knew what was a legal tender for a debt contracted in 1860 I cannot say. I have my doubts as to whether he knew or not. I cannot say as to what his opinions were in regard to public sentiment. I suppose that he did not wish to be different from other people. He was a strong Union man, and was so considered in the neighborhood.

6th Q. Were not his neighbors generally, including yourself, very decided Union men?

Ans. Nothing like Mr. Samuel Lipse was.

7th Q. You do not mean, I suppose, that during the contest Mr. Lipse would have betrayed, if within his power, the army of the Confederacy in which his sons and friends were enrolled?

190 Ans. No, I think not.

8th Q. Are you not aware of the fact that he during the war received payment, without objection, of debts due his testator and of notes given for purchases made at the sale of the property before the war and that he exhibited the same before Com'r Logan in 1864, and that he then, to complete the distribution of the estate, charged up at that time to himself as if then paid to him in Confederate money all solvent balances then held by him as Executor?

Ans. I do not really know that I knew anything about that or that he said anything to me about it. I have never seen the settlement here of that matter.

9th Q. You were asked in the 13th question "whether in your opinion Mr. Lipse had any financial talent, whether he knew the difference betwixt checks and drafts or the difference between negotiable notes or bonds or promisory notes," will you be kind enough to explain what the difference is?

Ans. I doubt if I can give an explanation myself. My understanding the difference between a check and a draft is that one is rather a command to pay and the other a request. My understanding between a bond and a negotiable note is that one is a simple promise to pay at a certain place or Bank; a bond, one obligation given under the hand and seal of the obligor; a promisory note is a mere promise to pay without a seal to it and not payable at any particular place. There is also a difference in regard to the limitation laws in

191 relation to the several papers in question.

10th Q. May not a man be very learned on all these questions and still in your opinion utterly destitute of financial talent?

Ans. Yes.

11th Q. Was not Samuel Lipse a man of very decided opinions and did he not exercise more than ordinary care generally of his affairs?

Ans. I think he was a man of decided opinion. I do not think that he was a man of extraordinary care about his business, though he was a farmer and attended to his little affairs about his farm very nicely.

12th Q. Does it not come within your knowledge that Samuel Lipse had intelligent counsel, to whom he resorted for

advice as to any important matters of business, such as the administration on that estate?

Ans. I do not know who his counsel was. I do not know that he told me. I expect that he did. I would presume that he did have counsel.

13th Q. Do you not remember that when his brother David was in this county and spent some months several years after the war, of hearing Samuel Lipse telling his brother David that in receiving the Confederate money, as well as making conveyance of the land, he acted under the advice of his counsel?

Ans. I recollect that David Lipse was here after the war and I recollect of hearing something said about the estate of
192 Moses Lipse, that there probably might be some difficulties about the matter, but what they were I can't now say. I do not think that I ever had any conversation with either of them at that time.

And further this deponent saith not.

LEWIS LINKENHOKER.

Deposition of William A. Glasgow.

Wm. A. Glasgow being introduced as a witness, after being duly sworn according to law, answering deposeth and saith as follows:

1st question by counsel for defendant, Sallie Moore Spears.

1 Q. State your age, occupation and residence, and whether you are the defendant in this suit.

Ans. I am fifty-five years old. Have resided here in Fincastle since the fall of 1846; am Att'y-at-law, and am, as Executor of Chas. C. Spears, dec'd, defendant in this suit.

Note.—The plaintiff by his counsel excepts to the introduction of Mr Glasgow as a witness, because he, Glasgow, is the Executor of Chas. C. Spears and Samuel Lipse, and some of the other parties to this suit are dead, and because the matters testified to by the deponent were transacted with Samuel Lipse, who is dead.

2d Q. State anything you may know as to the purchase of the land in the Bill mentioned by C. C. Spears from Moses Lipse's executors; also, what resources he had for payment, and
193 how and when the payments were made?

Ans. Charles C. Spears was a native of Rockingham County, Virginia. His parents had died some years before he made the purchase; the last, his father, about 1856 or 7, leaving a good estate which had been settled up. His share amounted to from ten to twelve thousand dollars, which he held in money and good securities. And Charles leaving school about 1859, he came to reside with me, my wife, then

living, being his sister. In the spring of 1860 he was married to a lady residing near Fincastle. She was the owner of some estate, part of it being a tract of land situate in the County of Craig, and which, soon after his purchase of the Lipse farm, they sold for $5,000. These reasons furnished the basis for his purchase. When the Lipse farm was advertised for sale at public auction he examined it and was pleased with it. I attended the offering of it with him, but the Executors were not satisfied with the public bidding and took it in. A few days afterwards I learned that he made purchase of it privately, and was shown by him the contract entered into between him and them, which has been placed on file in this cause. The contract is in the handwriting of John T. Anderson, who was the attorney of the Executors, and was signed by the Executors and C. C. Spears. I know nothing about the first payment except what I understood from him and afterwards from the Executors, that they said was paid, either at the time the contract was made or as soon thereafter as, by survey, the amount of land was ascertained. In the spring after the pur-
194 chase, I think in May, 1861, Charles Spears, as a private in a volunteer Horse Company, of which he had been a member for a year or two, was mustered into the military service of the Confederate States, and was with the army until about September, when he was taken with violent illness, typhoid fever, at Manassas. I went to see him, and obtained leave to bring him home, which, with some assistance, I did, bringing him all the way on a litter by railroad to Bonsacks, and thence here in a hack.

In the month of January, 1862, Spears recovered so far as to return to the military service, and I never saw him afterwards. He left his affairs in my charge as his friend and agent, with the request that I would use all diligence to have his payment to Lipes completed. About the time he left, my family were most of them very much afflicted, my wife and children all sick, of which, in the month of February, within two weeks of each other, my wife and two of my children died. My house was a hospital, and myself confined so closely that I was unable to give any attention to his business until the last of February. I then, having made moneyed arrangements for Spears, sent a message to Mr. Samuel Lipes that I was ready to pay the balance for Spears.

On the same occasion when I paid him the balance of $1,990.73 on the land bond, he produced a note of C. C. Spears to Moses Lipes' Executors, dated April 26th, 1861, and payable on demand, for $63.60, of which he requested payment, and I then at the same time paid the same with the accrued interest on it, amounting to $66.82.

195 On the 2d September, 1862, Spears was killed in a skirmish near Leesburg, in Loudon county, of which we soon received intelligence. He had made a will appointing me his Executor, and on or about the 3d October, 1862, when the last payment became due, I went to see Samuel Lipes who lived seven or eight miles distant from this place. I went to Spears' farm on that day to look after his business there, and on the same trip made it my business to call on Samuel Lipes who lived within a mile or so of it.

In the following February or March, finding it very troublesome and engrossing me with great care to look after the management of the farm, and having what I deemed a most acceptable offer from W. A. McCue, a friend of Spears and of his family, to buy the place and thus to convert his estate into money secured on mortgage to my mind best suited for the maintenance and raising and education of his only child, and his widow and her father having projected the sale and highly approved of it, I negotiated sale of the farm to McCue at the price of $15,000, payable as stated in the deed and contracts exhibited in this case. I did this at the suggestion of the widow of Spears and her friends and it had my entire approval as judicious and proper. This negotiation having been completed, it became necessary to have conveyance of title, and which considering the question whether to accept conveyance from Samuel Lipes, Ex'or, alone or to bring the subject before a Chancery Court for decree for title, my attention was
196 arrested by the Act of Assembly passed during that winter, spoken of in the proceedings of this cause, as authorizing the acting Trustee or Executor resident within the State, in the absence of his co-trustee or co-executor, to go on and execute the trust alone, I concluded that it was my duty as Executor of Spears to accept of such conveyance from Samuel Lipes the resident Executor, and that I would not be warranted in setting up other claims.

I had no acquaintance with any of the Lipes family until after the death of Moses Lipes. My first acquaintance with any of them was on appearing as counsel in aid of their standing counsel, Col. Anderson, in defending a suit brought against the Executors by Dan'l Lipes. At that time I was associated in partnership in the practice of law with the late W. H. Anthony of Buchanan, near to which place Samuel Lipes lived, and who employed Mr. Anthony and consequently myself in defence of the Executors.

He never consulted with me or his counsel about any business. I presume he had such counsel as he preferred. Col. Anderson lived in his neighborhood, was nearer his age, and I am per-

suaded was the counsel of the Executors pertaining to their business; I had no occasion to examine the affairs of Moses Lipes' estate; I did know that one of the Executors lived in the Western States, but had no knowledge as to the condition of the estate or how it was to be disbursed. And I am
197 equally sure Spears knew nothing about it. I knew that Moses Lipes died a very old man, owning a farm on which he had lived long before my recollection, about the title to which there had never been a question of doubt, and I never deemed it required by reasonable prudence to make any enquiry farther than to know that it was for sale and a good title to be made. I never made any enquiry or examination farther, and I have no idea that Spears did, for I am sure he looked alone to me as his counsel.

3 Quest. Levi Huff, in his leading examination, says that early in 1863 Mr. Samuel Lipes sent for him to come and receive a payment on his wife's distributive share in the estate of Moses Lipes, dec'd, and in answer to question 13 he says, "I went to his house and he told me Mr. Glasgow had been at his house and counted out the Confederate money for the back payment, and he (Lipes) objected to the money and didn't take it. Then Mr. Glasgow proposed to give me (he said) a check on the Fincastle Bank, and I accepted the check on the Fincastle Bank, &c." State whether you made Mr. Lipes a payment at his house at all?

Ans. I did not.

4 Q. Were you ever at Samuel Lipes' on any other occasion than the one referred to?

Ans. I have no recollection of ever being at the house of Samuel Lipes on but the one occasion, noted in my former answer, and am confident that is the only occasion I was ever there.

198 5 Q. Did you ever know anything of the alleged altercation between Huff, Custer and the Cashier, McCreery, at the Farmers' Bank of Fincastle?

Ans. No, sir. I never heard of such altercation until he stated it in his deposition. I am equally certain if such had occurred that McCreery would have mentioned it to me, for I met with McCreery daily almost without exception. His Bank office was not 50 steps from my office. I was the President and he the Cashier of the Bank, and our intercourse was unreserved as to all matters of business in the Bank. I never heard of such an issue occurring between McCreery and any one during his connection with the Bank. Such conduct as that attributed to him by Huff and Custer is utterly inconsistent with McCreery's character and manner of business. He was

uniformly civil in his intercourse with men having business with him. It is simply impossible for any such conduct to have been indulged in by McCreery without an absolute change and perversion of the man. As to my acquaintance with Huff, I had no acquaintance whatever with him at as early date as that mentioned. I may have seen him before, and no doubt did, and may have heard his name, but I never had any acquaintance with him until the winter of 1863-'64. During that year, commencing about the end of the year 1863, I was engaged in business at Catawba Furnace, and had occasion to call on business at a little mill owned and operated by Huff, a mile or so distant from the Furnace, then I became acquainted
199 with Levi Huff, and for the first time in my life learned from him that his wife was one of the Lipse family.

Such occurrences as those detailed by Huff and also by Custer as having occurred in the Bank, never took place in my presence, and I never heard of such as having occurred, although I was intimately acquainted with the parties noted by Huff as being present, all of whom except McCreery are now dead. And it may not be impertinent to add that McCreery had removed to another State, and had not been seen here for many years previous to Huff's making such deposition.

6th Q. Did you as Ex'or of Charles C. Spears, dec'd, ever do or say anything to Samuel Lipes, with a view to compel or coerce or constrain him, to receive Confederate money in payment of said Spears' land bonds; and was or was not his taking the same a voluntary act on his part, so far as you know?

Ans. I never did. There was no question raised or ever suggested as I remember of the goodness of the money. We all thought the money good; I not only said and did nothing to coerce or constrain him to receive Confederate money, but I never during the war said or did anything to constrain any person whatever to receive it. The receiving of it was purely voluntary on his part. In my opinion, I will add, if Samuel Lipes had been unwilling to receive it, I could not, and I firmly believe no other person could have coerced him to do
200 so. My opinion of Samuel Lipes is that he was remarkably firm and resolute, as little disposed to yield his convictions as to what he ought to do, as any man I knew. Confederate money, when it was received by Samuel Lipes from me was so far as my knowledge goes, received generally by everybody, in payment of all debts, without regard to whom contracted and cheerfully received.

7th Q. Levi Huff, at his first sitting, on leading examination, in answer to question 22, stated that Samuel Lipes in his pres-

ence on two separate occasions *refused* to make you a deed; state whether Mr. Lipes *ever* refused to make the deed?

Ans. It is not true that Samuel Lipes ever on any occasion refused to make me a deed. He was always willing and so expressed himself from the receipt by him of the last payment to make the deed, the only question was raised by myself whether as executor of Spears I ought to accept of a deed without his brother David uniting with him. And when the Act of Assembly came to my attention, passed afterwards, I mentioned it to him, he never raised any objection that I remember. It is probable he may have enquired whether in doing so he had authority, but about this I know nothing further than that, at his suggestion, I prepared what was deemed a proper conveyance of the title which he afterwards cheerfully and without objection executed as I have stated.

201 8th Q. State whether you knew anything about Samuel Lipes having been threatened with imprisonment on account of his loyalty to the Union?

Ans. I never heard of such things. I do not remember ever to have heard any question raised of his disloyalty to the Confederacy. I am sure I would remember it if I had heard it, for I knew that the young men, nearly all of his neighborhood, were in the army, including some of his sons, and without any special enquiry supposed that his heart, in common with all around him, sympathized in their success. Mr. Lipes was not a politician or public man, but a private citizen, and I don't know that I ever felt any interest to enquire his political views; it seems from testimony now adduced that he was a "Union man." However, that signifies but little, as all parties, then alike in this section, (whose love for the "Union" was before the war uppermost in the hearts of almost everybody,) huzzared together when they heard of Confederate victory, and sympathized together when they heard of reverses.

9th Q. Please refer to the depositions of J. M. R. Sprinkle and Benjamin Brugh, and state in what character and by what authority you received and refused to receive moneys of them?

Ans. Dr. Woodson, late of Botetourt, in his lifetime sold land to Brugh and also to Sprinkle. Upon Woodson's death his widow qualified as his executor or administratrix in

202 January, 1858. In January, 1861, Mrs. Woodson removed to the city of Memphis, Tennessee, where she remained until 1863, when she returned to Virginia, and reached her native county, Botetourt, in February or March, I think March, 1864. When she removed to Memphis she left in my charge, as her attorney, bonds of Brugh and also of Sprinkle, for balances due on the land as stated, for collection, not for

suit without further orders from her. I made collections of each of them for her without question or hesitation about the currency. Among other receipts I received in such currency (for there was none other to be had) from Mr. Sprinkle a payment of $1,300 on the 21st November, 1862, and gave him credit on his bond for same. No further payment was offered by Sprinkle until about a year or more afterwards. I remember on one occasion to have met Mr. Sprinkle on the steps of the Court-house, coming out of a public meeting, on which occasion, refe/ing to my having expressed to him a few days before unwillingness to receive further payment on his bonds, Mr. Sprinkle called me aside and insisted that I ought to receive payment from him on his bonds, adding that Col. Anderson had just in a public speech characterized any one who would not receive it as among the worst enemies of the country. I remember to have told him I would see Col. Anderson and confer with him. This I did with a knowledge that Col. Anderson had in his charge some important concerns
203 of Mrs. Woodson. I mentioned to Col. Anderson what had been told me, and stated to him that in the course of the war Mrs. Woodson had fallen into the Federal lines, that we could have no communication with Memphis, her place of residence, and that I was unwilling to receive further payment for my client which I had not the power to remit to her, and that I would not and could not, as I understood my obligations, receive it. We parted at this, and I met Col. Sprinkle soon afterwards and told him my conclusion. It may not be impertinent, as the subject has been spoken of by other witnesses, to add that Mrs. Woodson returned here in March, 1864, and became my wife in the following July, and I trust such may remain "until death us do sever." I may also add that there was no correspondence between her and myself after the fall of Memphis into the Federal lines until her return to Virginia in 1864.

10th Q. State whether you were acquainted with the operations of the Savings Bank in Fincastle and whether it received payment of debts due it, in Confederate money, until it closed out in April, 1863?

Ans. I was a stockholder to the extent of about $1,000 in the Fincastle Savings Bank, and felt interest in its business and management. I know the fact that no question was raised by its management, or objection to receiving payments of
204 any debts held by it while it was in operation, in Confederate currency. Such currency was received by the Savings Bank, and also by the Farmers' Bank of Fincastle on par with the Bank-note currency, which it supplemented. It

is impossible that any rule excluding the receipt of Confederate money could have been adopted by the Savings Bank without my knowing it. Indeed, in preparing to wind up, I know that the Bank invited payment in the Confederate currency (when there was none other), and in the division of the assets I was paid up my whole share in Confederate money, and have received nothing else, except such as got some of the slow or suspended bills, which the cashier had been unable to collect.

11 Q. Please state, if you know, what became of the papers and records of the Farmers' Bank of Fincastle?

Ans. The papers and records of the Farmers' Bank of Fincastle were in my law office in a large press at the time of the "great fire" in May, 1870, and were all burned up with my office. There was also burned at the time more than half of my library, and many of my valuable papers and books of account.

Note.—The counsel for the plaintiffs hereby excepts to the foregoing deposition, because the said William A. Glasgow, the defendant in this suit, is an interested witness and they
205 hereby file a copy of the will of Charles C. Spears, in which said Glasgow is named as executor, and extract showing that he qualified as executor, herewith filed, marked "A and B," and because Samuel Lipse and several of the other plaintiffs are dead, and for other reasons apparent in the records and the plaintiff's counsel declining to cross-examine the witness.

And further this deponent saith not.

W. A. GLASGOW.

[The will of C. C. Spears above referred to has heretofore been copied as Exhibit D, filed with the original Bill and is not here re-copied. See page 26.—F. W. Rives, Clerk].

OPINION.

D. H. Lipse, surv'g Ex'or, and in his own right as Devisee of Moses Lipse, dec'd,

vs.

Spears' Ex'or.

The leading and decisive enquiry in this case, is whether the devisees of Moses Lipse, dec'd, are concluded by the facts proven in this case, from further prosecution of their claims against the estate of their testator. If that estate has been legally administered, and their rights to the same conclusively and legally settled and barred by the acts of the executor Samnel Lipse, then their remedy in the premises must be
206 remitted to the official responsibilities of said acting ex-

ecutor. But, if on the other hand, the corpus of that estate still subsists and is in a situation to be pursued by those interested in its distribution, then the Plaintiffs in this case, and especially the surviving executor, for himself and other legatees, may be properly heard in their assertion of their lien on the lands of Spear which he bought of Lipse's executors. Whether a bar in law or equity exists to the recovery of the Plaintiffs depends upon the legal effects of the acts of Samuel Lipse as executor of the Testator. If he had the right to receive Confederate money, for a confessedly specie demand, and did so willingly demand and receive the same, and thereby satisfy the claims of legatees, to that extent and to that extent alone, he may be held exempt from responsibility, but, if on the contrary, he received worthless currency in payment of a specie debt, and without proof of the necessity thereof, he is guilty of a devastavit, and there is nothing in such act to divest the devisees of their interest in, or lien upon the estate of their testator for their legacies.

So far as the complainant David H. Lipse as sur'g Ex'or and suing in behalf of co-legatees, is concerned, there is scarcely a pretence that his suit is barred by the settlement of the acc'ts of Samuel Lipse as Ex'or. These acc'ts were wholly ex parte as to him without notice of any kind, and in his absence in another State during the Rebellion when all intercourse
207 and correspondence were prohibited by law, I do not suppose under the proofs in this cause, any pretension can be rightfully made to the priority actual or implied of the chief complainant to this settlement made by Samuel Lipse in his own name and that of his co-executor.

The whole interest of this complainant in his father's estate was promptly subjected *subjected* to sequestration through Sam'l Lipse as the acting executor, and if this illegal act is validated in this case I may safely say that it will be the first one in which this act of insurgent States has been countenanced and enforced in a Court of the U. S.

The lien of the devisees on Testator's lands for the purchase money can only be divested by the proof of its payment or by deed conveying the legal title. Touching the *first*, I do not understand any claim is or can be advanced for the validity of a payment in Conf'd. money for an ante-bellum debt. It is conceded in the argument by Deft's counsel that it may be regarded as a devastavit on the part of Sam'l Lipse; but the Def't Glasgow denies his complicity in or responsibility for it. But, on the second point, it is alleged that the deed of Sam'l Lipse, as Ex'or, of 7 April, 1863, conveying said Moses Lipse's lands to said Spears' Executor, passed the legal title and divested

the interest of Moses Lipse's heirs or devisees. It is not pretended that this deed could have this effect apart from
208 the Act of Mar. 5, 1863, of the Gen'l Assembly of Va. But this Act has been pronounced invalid so far as investments in Confd. money under sanction of state courts are concerned.—How v. Lockhart 17 Wall, 570; and for a stronger and more cogent reason it is invalid so far as it militates against the remedies and rights of loyal citizens of other States. The Act is one emphatically of Belligerency and of legislative spoliation upon claimants in this State who chanced to be by the war on the loyal side. It would be a reflection upon the victory of the Federal arms if such a legislative contrivance could avail after the cessation of war to override and defeat the remedies and interests of loyal citizens of other States. I have no hesitation therefore in pronouncing this act of assembly a *nullity* and that the def't can claim nothing under this deed.

I hold therefore that the transaction stands as if no deed had been made by Lipse's ex'or; that the legal title is still outstanding in the surv'g Ex'or David H. Lipse; that no valid pay't has been made by Spears' Ex'or, and that a lien still subsists in behalf of Complainant upon the lands purchased of Moses Lipse's Ex'ors by said Spear in his life time. It is the duty of this Court to uphold and enforce the will of Moses Lipse. It was made upon the eve and doubtless in view of the probability of war. The Testator had a large family scattered in the different states of the Union. To secure their inter-
209 ests in case of a civil conflict he took the precaution of making a son in Indiana and one in Virginia jointly executors of his will, with power to sell his real and personal estate and distribute the proceeds amongst his children, subject to advancements enumerated in his will. Doubtless he presumed he could in this way guard and protect the interests of his non-resident descendants from the violence and antagonisms of the threatened war of sections. His resort to this precaution was wise and reasonable. Be this however as it may, whether designed or accidental, his will must prevail; and nothing can be better settled than that both of these executors must concur in the execution of this power, and that it cannot be exercised by one alone.

The knowledge of this fact is brought distinctly to the notice and acknowledgment of def't Glasgow by the recitals in the deed he took of Moses Lipse as Ex'or. That deed is the leading title paper of, the derivative purchaser from Glasgow; and necessarily put them on enquiry into the effect of their deeds. If there was an infirmity in Sam'l Lipse's deed, they took subject to that infirmity under the familiar doctrine of *Caveat*

Emptor. If Glasgow got no title, neither did the purchasers from him, nor can they complain of this, because the recitals of their title paper call their attention especially to the fact how and why they claimed the validity of a deed from one alone of two parties charged with the execution of joint power.
210 If they made a mistake, however grievous, they must bear the consequences of it. For these reasons, I hold the purchasers under Glasgow subject to the outstanding liens of Moses Lipse's devisees.

But it is urged that this lien has been extinguished by Glasgow's pay't to Samuel Lipse. I have heretofore announced the general principle that a fiduciary, whether executor, trustee or agent, cannot take worthless currency in pay't of a specie debt, unless he be prepared to justify it by extraneous circumstances; that giving a credit therefor amounts in an excutor to a devastavit on his part and a debtor unfairly imposing such pay't upon him shall be held liable therefor.

Under the light of these adjudications, let us look at the transactions between Glasgow, Spears's Ex'or and Sam'l Lipse, Moses Lipse's Ex'or. Under the facts and proofs of this cause, I should do injustice to Mr. Glasgow's intelligence if I should call in question his full knowledge that his testator's debt to Lipse was not payable in Conf'd. money, and that the receipt of it by the latter would be a devastavit on his part. I readily concede it was a venial zeal on his part for his deceased friend Spear, to propose once the liquidation of his debt in Conf'd. money, but when that was once refused, as it is clearly proven in this case on the express ground, that such currency "was of no value," it ceased to be a virtue or even excusable when renewed, and a check upon the Fincastle Bank was ten-
211 dered and received in lieu of Conf'd. money. The Court is bound to take notice judicially of the fact that in 1862 the banks traded only in Conf'd. currency, and that a check upon them was generally payable in that currency. Hence, there was no substantial difference between the Bank check and Conf'd. notes as a medium of pay't. The testimony in this case, by the receiver of these checks, demonstrates the fact if, indeed, any corroboration be needed.

It is very manifest, Mr. Glasgow saw in this transaction a profitable speculation for his deceased friend's estate. It would have been a handsome thing to acquire $10,000 dollars worth of Botetourt land for about $2,000 in a depreciating currency; but to accomplish this, he must abide the responsibilities cast upon him by the proofs of his activity in pressing his pay't and the state of terrorism and denunciation against those refusing this currency. He, doubtless, has failed in this specu-

lation, but how stands it with the surv'g Ex'or, D. H. Lipse, his whole patrimony is dispersed to the winds, and has gone to swell the fisc of the insurgent gov't that he was opposing, and which is now no more. There can, therefore, be no comparison between the hardships of the two cases. I am constrained, therefore, in my view of this case to decree the nullity of the deed from Moses Lipse Ex'or to Glasgow, the cancellation of the same; and unless Glasgow ex'or aforesaid shall in a reasonable time, say 90 days, pay to D. H. Lipse, surv'g ex'or as aforesaid the amt. of the two deferred pay'ts of
212 '61 and '62, with interest from date of maturity, the said Lipse, or some one for him shall then proceed to sell the tract of land of which Moses Lipse died possessed, on the usual terms, and hold the proceeds for distribution among the parties according to their rights as may hereafter, at the election of said Glasgow, be ascertained by reference to a master as to the voluntary receipt of legacies, &c.

While this reservation is made for def't Glasgow, so that he may not be prejudiced in any claim, he may be advised to assert against such of the parties as may have voluntarily received their legacies in this depreciated currency, he cannot now or at any future time, be entitled to any credit on the payments to Moses Lipse's Ex'or already disallowed by the Court.

ALEX. RIVES.

31st MAR., 1882.

And afterwards, to-wit, on the 5th day of May, 1882, came the said defendant William A. Glasgow, Executor of Charles C. Spears, deceased, by his attorneys, and filed in the Clerk's Office of the said Circuit Court his appeal and supersedeas bond, which bond together with the endorsement thereon made is in the words and figures following, to-wit:

David H. Lipse, in his own right and as the surviv-
214 ing Executor of Moses Lipse, deceased, William Lipse, Moses Lipse, son of Samuel, George W. Lipse, Jacob Lipse, Isaac Custer, Joseph Lipse, son of Joseph, Hetty McClure (née Lipse) and her husband William McClure, James Craft, Moses Lipes, Montgomery P. Boreing, James M. Boreing, John W. Boreing, Mary R. Hunter (née Boreing) and her husband John C. Hunter, Ellen B. Scott (née Boreing) and her husband Daniel Scott, Susan E. Keplinger (née Boreing) and her husband, James M. Keplinger, Virginia A. Keplinger (née Boreing) and her husband Thomas D. Keplinger, Florena E. Boreing, David Lipse and Christopher Lipse, Plaintiffs.

against

William A. Glasgow, Executor of Charles C. Spears, de-

ceased, Madison McCullock, Sallie Lewis and her husband —— Lewis, Sallie Moore Spears, Wm. McCreery, trustee, Robert K. Godwin, trustee, and Wm. A. McCue, Catharine Huff (née Lipse) and her husband Levi Huff, Barbara Brownlee (née Lipse), widow, John W. Lipse, in his own right and as administrator of John Lipse, deceased, Oscar L. Lipse, Rebecca E. Leffel (née Lipse) and her husband Ferdinand Leffel, Dyce Ann Reynolds (née Lipse) and her husband Luther Reynolds, Samuel M. Lipse, Jr., Martha J. Houseman (née Lipse) and her husband Samuel Houseman, John M. Lipse, Wm. L. Lipse, Rebecca Allen (née Lipse) and her husband John B. Allen, Margaret Lipse, Danville Kessler (née Lipse) and her husband Peter Kessler, Christopher Lipse, Fran-
215 cisco Lipse, Taylor Lipse, Harvy D. Lipse, in his own right and as administrator of Samuel D. Lipse, deceased, Esther Lipse, widow of the said Samuel D. Lipse, deceased, Robert Lipse, Millard F. Lipse, Anna V. Lipse, Charles Lipse, Bowyer Lipse, Mary Lipse, Caroline Lipse, Eugene Lipse, the last six of whom are infants, Samuel H. Lipse, Virginia C. Showalter (née Lipse) and her husband Samuel Showalter, Charles T. Lipse, Lewis T. Custer, Christopher Custer, Joel G. Custer, in his own right and as executor of Samuel Custer, deceased, Missouri Lollis and her husband W. E. Eollis, Ellen and her husband J. Neighbors, Alex. Smith, Ballard Smith, Coleman Smith, Davis Smith and Jefferson Smith, Henry Lipse, Samuel Lipse, son of Joseph Lipse, Rebecca Watkins, (née Lipse) and her husband Moses Watkins, and Catharine Lipse and Joseph Robinson. Defendants.

Know all men by these presents, That we, William A. Glasgow, Executor of Charles C. Spears, deceased, and F. T. Glasgow, of the city of Richmond, Va., are held and firmly bound unto to the above named plaintiffs in the just and full sum of ten thousand dollars ($10,000.00), to be paid to the said above named plaintiffs, their heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22d day of April, in the year of our Lord one thousand eight hundred and
216 eighty-two.

WHEREAS, The above named William A. Glasgow, Executor of Charles C. Spears, deceased, hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States for the Western District of Virginia, holding its

session at the City of Lynchburg in said District at the March term, 1882, of said Court.

Now, therefore, The condition of this obligation is such that if the above bound named William A. Glasgow, Executor of Charles C. Spears, deceased, shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

W. A. GLASGOW, [SEAL.]
Ex'or of Charles C. Spears, dec'd,
F. T. GLASGOW, [SEAL.]

Sealed and delivered in presence of
THOS. S. ATKINS,
U. S. Com'r E. Dist. of Va.

This 22d day of April, 1882, personally appeared before undersigned the above named F. T. Glasgow and made oath that he is worth ten thousand dollars over and above his just debts and liabilities.

Given under my hand.

THOS. S. ATKINS,
U. S. Com'r E. Dist. of Va.

217 Endorsement: This bond is approved as good and sufficient for appeal and supersedeas under Equity Rule of Supreme Court of U. S. No. 29.

ALEX. RIVES, Dist. Judge,
and as such, in absence of Cir. Judge, holding Cir. Court and rendering decree complained of.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF VIRGINIA,
CITY OF LYNCHBURG IN SAID DISTRICT:

I, F. W. Rives, Clerk of the Circuit Court of the United States for the Western District of Virginia, in the Fourth Circuit, do hereby certify that the foregoing is a true transcript of the record and the proceedings in a certain chancery cause lately depending in the said Circuit Court between David H. Lipse in his own right and as the surviving Executor of Moses Lipse, deceased, and others, Plaintiffs against William A. Glasgow, Executor of Charles C. Spears, deceased, and others, with

all things touching the same, as fully and wholly as they now exist among the records of my office.

218 In testimony whereof I hereto set my hand and annex the Seal of said Court, at my office, in the City of Lynchburg, in said District, this third day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the 106th.

{SEAL.}

F. W. RIVES, Clerk.

The fee of the Clerk for making out this transcript of the record is $88.40

F. W. RIVES, Clerk.

SUPPLEMENT TO RECORD

—IN—

Spears' Ex'or, &c., v. Lipse's Ex'or, &c.

1 The following are copies of all the depositions for the plaintiffs which were ruled out by the Court as incompetent testimony, to-wit:

Deposition of Esther Lipse.

Esther Lipse, being duly sworn, answering saith and deposeth as follows:

1st Question by Plaintiffs' counsel.

The witness being the wife of Sam'l Lipse, dec'd, the defendant, by counsel, objects to her testimony being taken.

Questions by Plaintiffs' Counsel.

(1.) What is your age? and where were you in the fall and winter of 1862?

Ans. I am going on seventy four, I believe; I lived in 1862 right where I do now, in Botetourt County.

(2.) Did you, or did you not, live at that time in the house of Samuel Lipse?

Ans. Yes sir, I lived in his house at that time.

(3.) State whether or not you saw there at the house of Samuel Lipse, about that time, Mr. Wm. A. Glasgow?

Ans. Yes sir, I saw him there at that time.

(4.) If Mr. W. A. Glasgow announce his business there at that time, what did he say was his business?

Ans. Well, he said that he came to pay for that land of Moses Lipse which Mr. Spears had bought.

(5.) If Mr. Glasgow produced anything, state what he produced?

2 Ans. Well, he counted out the money for him.

(6.) What kind of money was it Mr. Glasgow counted out for Mr. Lipse?

Ans. It was Confederate money.

(7.) Was it a small bundle, or was it a large bundle of Confederate money Mr. Glasgow counted out?

Ans. It was a right large pile when he counted it out. I do not recollect how much.

(8.) Did or did not Mr. Samuel Lipse accept and receive the Confederate money offered and counted out to him by Mr. Glasgow?

Ans. No, sir, he did not. He said that he would not have it.

(9.) What did Mr. Samuel Lipse then say in the presence of Mr. Glasgow about the Confederate money as to its value, if he said anything about it?

Ans. He told him that it was of no account. Mr. Glasgow then offerred him a check to the Fincastle Bank, and asked him if he would take a check on the Fincastle Bank, and he told him that he would.

(10.) If Mr Samuel Lipse said anything to Mr. Glasgow about the Fincastle Bank money which he would get on the check, please state what he did say?

Ans. Well, I do not recollect that he said anything.

3 (11.) If you know, please state whether or not Samuel Lipse was then, and during the war between the North and South, a Union man or a secessionist?

Objected to by def't.

Ans. He was a Union man all of the time. If all had been Union men like him, there would have been no war.

Cross-Examined by Wm. A. Glasgow, Counsel for Defendant.

1 Q. State as near as you can the time of this visit of the defendant Glasgow to your house—if possible, the month and year?

Ans. I cannot say what time it was, but I know that he was there.

2 Q. Was he there, ever, on any other occasion?

Ans. No, sir, not that I know of; that was the first time I ever saw him.

3 Q. Did not your husband receive Confederate money from all persons owing the estate?

Ans. He took some, that he was obliged to take because he could not get anything else, and couldn't help it. The other property was sold and settled up pretty much before Confederate money came into circulation. The land was sold before, too, and one payment paid.

4 Q. What do you mean by saying that he took some because he was obliged to do so? Do you not mean that he was obliged because that was the only kind of money in

4 circulation?

Ans. He was obliged to have some money, and there was no other in circulation.

5 Q. How many of your sons and nephews of the descendants of Moses Lipse were in the army? and who?

Ans. There were four of my sons in the army, and one was killed. They were obliged to go, or run off, one of the two. The only nephews that I recollect of was Samuel Lipse and two of Dan'l Lipse's sons; also James Brownlee, as I have heard; I did not see him in the army myself.

6 Q. Which of your sons first went to the war, and in what companies? State as near as you can the time of leaving.

Ans. David went first, in the Buchanan company. He went pretty much among the first companies, I recon. Harvey went next. He was in Allen's company.

7 Q. Did not your husband hear from his Bro. David during the war?

Ans. I do not know that he did, nor do I know how he could have heard.

8 Q. Were any of the Lipse soldiers captured and put into Northern prisons during the war?

Ans. I think my son Harvey was.

9 Q. Did you not hear your husband say that he had word from his brother David, either during or just before the war, in which he desired him to wind up the estate in whatever way he thought best for him and all concerned?

Ans. I do not mind of hearing him say anything about it. I can't mind it.

And further this deponent saith not.

her
ESTER ✕ LIPSE.
mark.

Deposition of John B. Allen.

Jno. B. Allen, a witness of lawful age, being first duly sworn according to law, answering deposeth and saith as follows:

1st question by Plaintiff's counsel. Where did you reside during the war? Who was your last wife, and when did you marry her?

Note.—The defendants by their att'y objected to the introduction of this witness as being incompetent, for the reason that his wife is one of the heirs and distributees of Moses Lipse, deceased, and as such one of the parties to these proceedings.

Ans. I resided on Mill creek, near Switzer's, in Botetourt County. My last wife was Rebecca Lipse, daughter of Daniel Lipse. I married her on the 15th of July, 1873.

Ques. 2. Were you acquainted with Samuel Lipse in his lifetime? Were you also acquainted with the lands sold by Moses Lipse's ex'ors.

Ans. I was.

Qu. 3. Were you at the sale made by Moses Lipse's ex'ors, and if so, state what part, if any, you took in said sale,
6 and also what price said land sold for, and what kind of currency?

Ans. I was there, sir; I cried the sale; I do not exactly know to my certain knowledge now for what amount I do not know that there was any particular kind of money spoken of.

Ques. 4. State, if you can, the day and year of sale?

Ans. It was, I think, in 1860.

Qu. 5. *Was* there many persons at said sale, and was the bidding spirited?

Ans. There were a good many people present, and from the magnitude of the sale, I thought the bidding was spirited.

Qu. 6. Was David H. Lipse and Samuel H. Lipse, the ex'ors of Moses Lipse, both present at the sale?

Ans. I do not recollect, but I think not.

Qu. 7. Where does D. H. Lipse reside, and when did he leave this State?

Ans. He left some time prior to the war; I do not know exactly; I think before I came to that neighborhood. He resides in Indiana.

Qu. 8. Was he in the State during the war.

Ans. Not to my knowledge

Qu. 9. Do you know anything about the payments made on this land—when made, and in what kind of money?

Ans. I think the first payment was made in Virginia money, or the common money in currency; that was made in 1860, and the balance of it I do not know so much about; I only know that one portion of it was paid in Confederate money.
7 How much there was of it I do not know now.

Qu. 10. Was the payment that was made in Confederate money of which you speak made to Samuel Lipse, and if so, was the money rec'd willingly or under protest?

Ans. It was made to Samuel Lipse. I was not present when the money was paid. Mr. Lipse told me that he protested against it.

(Answer objected to as hearsay.)

Qu. 11. What were Mr. Samuel Lipse political sentiments during the war? and did he have faith in the soundness of the Confederate currency then in circulation?

Note.—Question objected to by deft's counsel.

Ans. His principles were Union principles during the war. He hadn't any faith in the Confederate currency.

Ques. 12. Did Mr. Samuel Lipse ever tell you that he was threatened during the war with confiscation of his property and imprisonment on account of his political opinions, and because he refused to take Confederate money?

Note.—(Question objected to by deft's counsel.)

Ans. He did.

Ques. 13. Are you not yourself aware of the fact that such was really the case?

Ans. Only from hearsay.

Qu. 14. Do you know anything of proceedings being
8 taken in 1862 or '63, in the Confederate District Court at Wytheville, looking to a confiscation of all the money due to the non-resident heirs of Moses Lipse, because Samuel Lipse refused to take the same?

Note.—Question objected to by deft's counsel as leading.

Ans. I only heard that proceedings were taken in that Court against that estate.

Qu. 15. Do you know what became of the Confederate money paid by the ex'or of Spears to Sam'l Lipse, one of the ex'ors of Moses Lipse, dec'd?

Ans. I cannot say that I know as to the money paid Sam'l Lipse by Spears' ex'or; I know that Sam'l Lipse got me to go to Lexington with some Confederate money to pay over to the confiscating agent, stating that it was money belonging to the non-resident heirs of Moses Lipse's estate.

Qu. 16. Please state the amount so given you, if you remember, and if you paid over the same?

Ans. I cannot recollect the amount; I paid it over and took a receipt for it; I suppose that receipt is among the papers somewhere.

Qu. 17. Were you well acquainted with Mr. Samuel Lipse, and if so, what was his mode of doing business? Was he a plain, unpretending citizen, or was he what you would call a shrewd, sharp business man?

Note.—(Question objected to on the part of deft's counsel as leading.)

Ans. I was acquainted with Mr. Samuel Lipse very
9 well; done business for and with him in a plain, even way; I didn't call him a shrewd man.

Cross-Examined by Deft's Counsel.

1st question. A receipt of J. G. Steele, of Lexington, Va., for $2,022.20, paid to him by Samuel Lipse, under a decree of confiscation of the interests of David, Josephus and Christo-

pher Lipse heirs, is on file with Samuel Lipse's settlements of his administration, of date March 30th, 1864. State whether this was for the payment made by you for him referred to in your answer to a former question?

Ans. It was in the spring of the year; I do not remember the amount, but from this amount, as it seems to be in the neighborhood of the amount I paid for him, I presume that it is the receipt for the money I paid over for him.

2 Q. Were you present when Spears made his first payment?

Ans. No, sir, I think not.

3 Q. Were you ever present when any payment was made by Spears or by his ex'or?

Ans. No, sir.

4 Q. Did not Samuel Lipse, after the war commenced, collect what was due the estate from sales of personalty, and also on bonds held by the testator, and account for the same in his administration?

Ans. I think that he did.

5 Q. Was there any objection heard by you at the
10 time to so doing; and was not the currency generally received in payment of debts?

Ans. I heard him objecting to receiving Confederate money for his own matters, but he said that he was going to settle his matters as soon as he could. It was generally received for debts, but though there were some objections.

6 Q. Can you state any one that you heard Samuel Lipse refuse to receive the currency from in payment of a debt, and if so, state who, and at what time, and the particular circumstances?

Ans. I do not think that I could state at what time at all. In 1862 he refused to take Confederate money from me for some rent that I owed him. I think that it was in the latter part of 1862 that this occurred.

7 Q. Was it not for the reason that he claimed that he was entitled to part of the crops for his rent?

Ans. No, sir; it was a money rent that I was bound to pay.

8 Q. How did you pay it?

Ans. It was paid in dribs mostly in services that I rendered him afterwards. I paid him a sack of salt since the war to close it out.

9 Q. State what property was rented by you, and what was your contract with him as to how it was to be paid, and when was the contract made.

Ans. The contract was made in May, 1858. It was a house and lot on the road that I had rented. There was no
11 specification as to how the rent was to be paid; I rented

it for two years, one year at a time. This was before the war.

10 Q. Was not his refusal to receive the currency late in the war, say in 1864 or '5?

Ans. It was in the fall of 1862, I think.

11 Q. What was the amount of his rent debt against you, and for which he refused to receive currency?

Ans. It was a balance due on the last year's rent of about $16 or $18. I do not recollect definitely now.

12 Q. In answer to question 5 on cross-examination, you say that Mr. Samuel Lipse said he was going to settle his matters as soon as he could. Did you mean his administration account?

Ans. Yes, sir, I meant that; that was what he referred to when he was talking.

13 Q. Were you not impressed, from his acts and conversations, with the fact that he was anxious to settle up his administration account as soon as possible, and be rid of the matter?

Ans. Yes, sir, I was impressed with that as the fact so far as the means were in his hands.

Re-Examined by Plaintiffs' Counsel.

1 Question. State, as far as you know, what estimate Mr. Lipse put upon Confederate money?

Ans. He regarded it as worthless.

2d by same. State if you had any money transactions with the Fincastle Bank during the early part of the late
12 war, and if so, who was the officers in said Bank? State, if you know, who was the President and Cashier of said Bank?

Ans. I do not think that I recollect who were the officers of that Bank. I had some transactions with it during that time, I think. I think McCreery was in the Bank as an officer. I did business with him, I recollect.

And further this deponent saith not.

JOHN B. ALLEN.

Deposition of Moses Watkins.

Moses Watkins being next introduced, and sworn according to law, deposeth and saith as follows:

1st question by Plaintiff's Counsel. What is your age, where do you live now, and where did you live during the war, and who did you marry?

Note.—The Deft's, by counsel, objected to the witness, Moses Watkins, being introduced and examined, on ground

that his wife is one of the heirs and distributees of Moses Lipse, dec'd, and one of the parties to this suit.

Ans. I am fifty-seven years old. I live five miles north of this place, (Fincastle), in Botetourt county. I lived at the same place during the war that I now live at for the most of the time during the war; but for about eight months
13 during the war I lived in Indiana. I married Rebecca Lipse, daughter of Joseph Lipse.

Qu. 2. Did you ever, by virtue of your intermarriage with the grand-daughter of Moses Lipse, realize any money from her grand-father estate?

Ans. Yes, sir.

Qu. 3. What kind of money, and how much?

Ans. A portion of it was Virginia money, but the larger portion of it was Confederate money. I cannot say with certainty, but I think about three hundred dollars in all.

Qu. 4. Who paid you this money?

Ans. Old Uncle Samuel Lipse. He came to my house each time that it was due and paid me.

Qu. 5. Did he, at the time he paid you the Confederate money alluded to, say to you how he came to have the same; if so, state what all transpired?

Note.—Objected to as hearsay by deft's counsel.

Ans. Well, he said that he was forced to take the Confederate money and that he wished for the heirs to take it of him. As mine was a small matter I thought as the balance had taken it that I wouldn't bother him about it.

Qu. 6. By the expression "balance had taken it," do I understand you to say that the parties living outside of the Confederate States had also taken Confederate money in satisfaction of their respective shares?

Ans. No, sir. I do not suppose that they had any chance to get theirs. I alluded to those that were here.

14 Qu. 7. At what time were you paid?

Ans. I think the 1st payment in October, 1860. The second payment I think didn't come till the next November following, (1861). The next one still in about twelve months following that.

Qu. 8. At what time did you go to Indiana?

Ans. I went in October, 1864.

Qu. 9. When Mr. Samuel Lipse told you he was forced to take Confederate money, did he say who forced him to do so; if so, give all the particulars of his conversation?

Note.—Objected to as hearsay.

Ans. I think that he said he had taken counsel of Col. Anderson and that he had told him to take it.

No. 10. How did he say he was forced to take this money?

Ans. He just said to that he was forced to take the money without saying how forced, and I asked him no questions.

No. 11. If you knew Mr. Lipse political sentiments during the war please state them?

Note.—Objected to by def'ts counsel as illegal.

Ans. Well, he was always a Union man and seemed to be opposed to the war. I suppose there is no question about that.

Cross-Examined by Def'ts Counsel.

1st Question. You mention that part of what was paid to you was in Virginia money and part in Confederate; was not the money that was paid you in the Fall of 1861 Virginia money, and was there much, if any, Confederate money
15 then in circulation?

Ans. I am not certain about the matter, but I rather think that two payments were made in Confederate money—I mean paid to me. I know nothing as to how or in what money he Lipse got it, nor do I know at what time he got it. I recon that there was very little Confederate money in circulation in the Fall of 1861 in this county.

2 Q. When Mr. Lipse told you that he had taken it in Confederate, did you not understand him that he was "forced" to take that because there was no other to be had?

Ans. Well, I suppose that he could have got Bank of Fincastle money. I think that there was Fincastle money in circulation about the time of the last payment.

3 Q. Was not the Confederate money at that time received on a par with Bank notes?

Ans. Well, some men would take it and some would not.

4 Q. Was not the currency of the country, made up of Bank notes and Confederate money, received generally in payment of debts and general transactions by the people generally in 1861 and 1862 and part of 1863?

Ans. Yes, sir.

5 Q. Did you not infer from Mr. Samuel Lipse's acts and conversation that he was anxious to settle up the admin-
16 istration account of his father's estate as soon as possible—be rid of the whole matter?

Ans. No, sir; he said that he would rather have not taken Confederate money but that he couldn't do any better.

6 Q. Did your wife receive her full distributive share of Moses Lipse's estate?

Ans. Yes, sir, I suppose that she did.

7 Q. Did you not understand that Mr. Samuel Lipse not

only consulted Col. Anderson but other counsel in reference to the administration of said estate, receiving Confederate money, &c.?

Ans. I do not know that he consulted any one else than Col. Anderson. I think that the Col. was rather a favorite of his. I understood from him, (Lipse), that he, (Anderson), had advised him to take the money.

And further this deponent saith not.

MOSES WATKINS.

Deposition of Levi Huff.

Levi Huff, a witness of lawful age, being introduced and sworn according to law, deposeth and saith as follows:

1st question by Plaintiff's counsel.

Qu. 1. Where did you live during the years 1860, 1861, 1862 and 1863, and at what time did you leave Virginia; where were you during your absence and when did you return to Virginia, and where do you now live, and
17 who did you marry?

Ans. During the years 1860, '61, '62 and '63 and a part of 1864—that is till August, 1864—I lived on Cautawba in this Botetourt county. In August, in the early part of the month and year, I left Virginia; I cannot give the exact day of the month. I was for the greater part of my absence in Indiana; travelled through Ohio considerably during my absence. I returned to Virginia or my home about the 1st day of May, 1865. I live in this county, (Botetourt), within a few miles of where I formerly lived. I married a daughter of Moses Lipse, dec'd.

Note.—The testimony of this witness is excepted to by counsel for def'ts on grounds that his wife, being an heir of Moses Lipse, dec'd, is a party to this suit, and is incompetent.

Quest. 2. What was your occupation during the war, and what is it now, and why did you go to the West in 1864?

Ans. My occupation during the war was attending a mill, milling. I am now engaged in farming. I went to the West because the enrolling officer at Amsterdam, in this county, arrested me with a said warrant which the report of the warrant to me that I was charged with disloyalty to the Confederate government, requiring me to report at once to Camp Lee, at Richmond, and there to be tried as such by court-martial.

That was the substance of the charge. I do not under-
18 take to say that this is the exact wording of the warrant read to me—only the substance. I begged of him for four days. He granted that period to me. The reason

that I begged him for four days was that I had in my mill a large amount of grain, and for the grain I had my receipts standing, but in the hands of the owners of the grain; that I might have the chance of turning over to the owners of the grain and get in my receipts. I had among the other grains about 1500 bushels, as well as I could then remember, belonging to the furnace company, and if I had to leave then I would be broken up and my neighbors the sufferers. Upon this consideration he gave me a respite of four days with orders to report in Amsterdam at the expiration of the four days with four days rations. I thanked him for his kindness and bid him farewell. I saw him no more. I left, or rather made arrangements to leave during those four days, and didn't report to him.

Qu. 3. Were you present at the sale of the real estate of Moses Lipse, dec'd, by his ex'ors, in the Fall of 1860?

Ans. Yes, sir, I was there on the day of the public sale. However the sale was not concluded or closed out on the day that it was put off at auction. The sale was not really perfected till shortly afterwards.

Qu. 4. Can you state whether the auctioneer proclaimed the terms of sale, mode of payments, &c., and the
19 currency in which said payments were to be made?

Ans. Yes, sir. It was sold on the terms that one third was to be paid down in cash on the day of sale. The other two thirds was to be paid in one and two years. In gold or silver as current money of the United States was the way I understood the sale to be made.

Qu. 5. Were both of the Ex'ors of Moses Lipse, dec'd, (as named in his last will), present on that day at the place of sale?

Ans. Yes, at the day that it was put up publicly for sale both were there.

Qu. 6. When did David H. Lipse, one of said Ex'ors, leave this State?

Ans. I think that he left for his home in a few days after the sale. I know that he left immediately after the sale was made.

Qu. 7. When did you next see him in Virginia?

Ans. Not until some years after the war—say four or five years—I cannot say definitely.

Qu. 8. Did you see him during your stay in the West while a refugee from your home?

Ans. Yes, sir, I did.

Qu. 9. Did you have any conversation with him in regard to the estate of Moses Lipse, dec'd?

Ans. Oh yes, frequently.

Qu. 10. Did you communicate to him the fact that Confederate currency had been paid for said real estate and
20 that his co-ex'or had made a conveyance for the same.

[Question objected to by def'ts counsel—def't not being present when conversation took place.]

Ans. I did, sir.

Qu. 11. Did he express dissatisfaction or not when so informed by you of what had been done?

Note.—Objected to by def'ts counsel as hearsay.

Ans. He did. He said that he was not satisfied and that he intended to recover his losses.

Qu. 12. Were you well acquainted with Samuel Lipse, the resident ex'or, and if so state whether he was a shrewd business man; also state his occupation?

Ans. Oh yes, I was intimately acquainted with Samuel Lipse. He was a very common, plain, unassuming man, capable of attending to his business at home. He was a farmer.

Qu. 13. What occurred between you and Samuel Lipse at his house when you went there to receive your portion of the money due you?

Note.—Question objected to by def'ts counsel.

Ans. He sent me word to come to his house, (that he was ready to give me a check for my interest on the Fincastle Bank, was about the message he sent me). I went to his house and he told me "Mr. Glasgow had been at his house and counted out the Confederate money for the back payment and
21 he, (Lipse), objected to the money and didn't take it. Then Mr. Glasgow proposed to give me (he said) a check on the Fincastle Bank, and I accepted the check on the Fincastle Bank, that being good money, and I will give you (meaning me) a check on the Fincastle Bank for your (meaning my, Huff's) wife's share as interest." I accepted the check, believing as I did that I would get Fincastle money. I don't remember now whether he (Lipse) gave me a written check at his house or whether it was done in the Bank, as we both came to Fincastle together and the business was concluded in the Bank.

Qu. 14. Did you and Samuel Lipse go to Fincastle together, and if so, who accompanied you?

Ans. We came together to Fincastle in company with Joel Custer.

Qu. 15. Who did you meet in the "Bank of Fincastle"?

Ans. I met Mr. George Wilson, Rufus Pitzer, Mr. McCreery and Mr. Glasgow are about all that I now remember of being in the Bank.

Qu. 16. Who was the president and who was cashier of this Bank at the time?

Ans. I regarded Mr. McCreery as the cashier, and from the information I had Mr. Glasgow was the president.

Qu. 17. What occurred when you presented your check, and what kind of money was tendered you in payment?

Ans. Confederate money. When Confederate money
22 was tendered me I claimed that it didn't answer my purposes; that I couldn't pay some debts that I owed with it. One debt was fifty dollars to Mrs. Woods, another was fifty dollars in the Savings Bank, of which they had refused taking Confederate money. McCreery, whom I esteemed as a gentleman, proposed to defer paying my claim, and he would, for my benefit, make an effort with the officers of the bank, at their next meeting, to secure me the hundred dollars desired; that ended the matter at the Bank that day with me.

Qu. 18. What occurred when you next called at the Bank?

Ans. He told me that he had made the effort, but had failed as yet to get it. But stated that he had named it to the directors, and that they said that they would consider of it, and if they would conclude to let me have the State money, that I could get it after their next meeting.

Note.—The foregoing question and answer excepted to by def'ts counsel on grounds that it has not been shown that def'ts were present at the time of conversation.

Qu. 19. Was the check given you ever paid, and if so, in what kind of money?

Ans. A part of it was never paid. I have a check for part of it at home among my papers now, unless it has been lately destroyed. I had it a few months ago.

23 Qu. 20. Give the reason why it was not all paid.

Ans. I didn't regard it as of any account as I couldn't make any use of it.

Qu. 21. State what passed between Mr. Glasgow and Mr. Sam'l Lipse in your presence in regard to the deed for said real estate.

Ans. The first time that me and Mr. Lipse came together to the Bank, which was at February Court, 1863, if I mistake not, Mr. Glasgow proposed to Mr. Lipse that he should or ought to make him that deed, I don't remember now what his language exactly was. Mr. Lipse remarked to Mr. Glasgow that I cannot make you a good deed; it won't be any account to you except Davy Lipse also signs the deed, being one of the ex'ors. That ended the conversation with him and Mr. Lipse in my hearing for that day.

Qu. 22. Please state any other conversation which took

place at any other time between the parties in your presence.

Ans. If I mistake not, at the March or April Court of the same year we met in the Bank again. Mr. Glasgow remarked again to Mr. Lipse that he wanted that deed (I don't know that I am giving the precise language, but the substance of the conversation), and Mr. Lipse refused to make the deed as on the former occasion and on same principles—"That without Davy Lipse signing it too, the deed would be no account to you, Mr. Glasgow." At that point Mr. Glasglow remarked to Mr. Lipse, "That there was a law passed or made by the Legislature of Virginia which meets this case of ours." Samuel Lipse then remarked, "if I make this deed according to that law, will I be released or free?" I think was the word he used. Mr. Glasgow remarked that he thought that he (Mr. Lipse) would, and referred him to Col. Anderson or uncle John, whichever he called him, I do not remember now, he (Anderson) being Samuel Lipse's counsel for advice. And at that they parted, Lipse saying, "I will see the Col." I saw nor heard no more that day.

24

Qu. 23. Did Samuel Lipse afterwards have any conversation with you in regard to this matter in the presence of either Mr. Glasgow or Col. Anderson?

Ans. If he did it has escaped my mind now. I don't think that he did. If it came to my mind I'll correct myself.

Qu. 24. At the time Mr. Glasgow remarked to Mr. Lipse that the Legislature had passed a law that "met" this case, did he read the law, or produce any paper or authority showing that such a law was passed?

Ans. Not in my presence. Certainly not on that occasion. If he did it was not in my presence.

Qu. 25. Can you state whether Samuel Lipse ever drew all the Confederate money out of the Fincastle Bank that Mr. Glasgow's check called for?

25

Ans. I cannot, sir.

Qu. 25. Have the non-resident heirs, so far as you can say, ever rec'd payment in Confederate money or any other kind for their interest in this estate?

Ans. For the 1st payment they got their quota with the balance of the heirs, but for the last two payments they have never got anything.

Qu. 26. You state that yourself, Samuel Lipse and Joel Custer, were in the Bank with Mr. Glasgow and others when you presented Mr. Lipse check and the Cashier tendered Confederate money, what did Mr. Lipse say to this?

Ans. I do not remember that Mr. Lipse said anything at

that time. The difficulty was all between myself and Mr. Custer.

Qu. 27. Was Custer there after his money, and if so was he in favor of taking Confederate money?

Ans. Yes, sir, Mr. Custer was there after his money. He was not in favor of taking Confederate money.

Qu. 28. Were any threats made by any of the persons present on that occasion towards either you or Mr. Custer for not willingly receiving this money, and if so who made the threats and what were they?

Ans. Yes, sir, there were threats made to both of us by Mr. McCreery and Col. George Wilson. After Joel Custer was criticising the money and complaining that I couldn't
26 pay my honest debts with it; that we were badly swindled by some one, McCreery remarked first that such men as we were "that they," having reference to the authorities, "had houses built for such men as you are" is about what McCreery said. Col. George Wilson remarked that every one (or such men) ought to be confined in prison.

Qu. 29. Did Mr. Samuel Lipse ever inform you why he made the deed for this land?

Note.—Question objected to by def'ts counsel as hearsay.

Ans. Yes, sir, he told me.

Qu. 30. Give his reasons if you remember them?

Objected to on same grounds as former question.

Ans. He said that Col. Anderson told him (Lipse) that he was obliged to comply with the law, and that if he did not make it willingly Mr. Glasgow had the lawful right (I think was the language used) to enter suit and procure his right, and that you (Lipse) might be the sufferer by it and I (Lipse) made it."

Cross-Examined by Def'ts Counsel.

1 Question. You stated on your examination in chief that both of the executors were present when the land was offered at public sale, and that David H. Lipse, the non-resident ex'or, left in a few days for his distant home in Indiana, was it not the understanding then, according to your best impression, that the resident ex'or, Samuel Lipse, was to be the active executor in settling up the administration account of
27 Moses Lipse, dec'd?

Ans. Yes, we generally understood that Samuel Lipse was to effect the sale. As to what the understanding was outside of the sale I do not know.

2 Q. Mr. John B. Allen states that he was the crier at the sale and that he does not recollect that anything was said as to

the currency in which the deferred payments were to be made. You answered in leading examination that you understood that the sale was for gold or silver or for current money of the United States. Do you mean to state that this was announced by the public crier, or that it was simply your impression at the time the sale was made that these would be the terms?

Ans. No; Allen as the crier said nothing about it, though the impression was made on my mind by Davy and Samuel Lipse, the ex'ors, that that was for what it was sold for and would be.

3 Q. When were you so informed? Where were you and under what circumstances was the conversation had?

Ans. In the morning of the sale, right on the ground; all of the heirs present were with the administrators. The question was made them for what kind of money should the land be sold for. It was the understanding between those present that it was to be sold for gold or silver or its equivalent
28 in current money of the United States. I do not know what was said to Allen the crier. He was not present when we were talking.

4 Q. Was C. C. Spears or W. A. Glasgow present at said conversation?

Ans. No, sir, they were not; what was said to them by the administrators I know nothing of.

5 Q. Are you not aware of the fact that Samuel Lipse heard from David H. Lipse frequently after the sale and before you went West in 1864?

Ans. Honestly I do not know that he did?

6 Q. When David H. Lipse returned to Virginia after the war, do you not know that he then took counsel as to whether Spears' estate was liable to pay for his (Spears) land and was advised that Spears' estate was not liable and that if there was a liability it was on the estate of the resident ex'or Samuel Lipse, and did he not desist from bringing suit then on account of this advise?

Ans. Yes, sir. I do not know that David H. Lipse took counsel as to whether Spears' estate was liable to repay for his land; and then he told me he was advised if he brought suit that it would fall upon Samuel Lipse, his brother, and he said rather than Samuel should suffer any more that he would rather lose his interest here than to disturb his brother, and of course he went off and didn't bring suit.

29 7 Q. Was not Samuel Lipse alive at that time, and did not he and David H. Lipse seek counsel together in the matter?

Ans. That I do not know, whether they went together or not. Samuel was alive at that time.

8 Q. Are there not some of the heirs of Moses Lipse, dec'd, who refuse to cooperate in this suit, on the ground that they have received what they were entitled to, and that it would be unjust to Spears' representatives to demand more?

Ans. I do not know of any that hold this sentiment. If I find that I am wrong I'll correct myself.

9 Q. For how much is the check which you say you now hold for the balance of your wife's distributive share, and which you did not receive, not having presented it for payment?

Ans. I think about $250, and I got that out after they had struck off one-third. I think that it is in the shape of a deposit; that is my mind about the thing.

10 Q. When Mr. Glasgow requested the deed of Mr. Samuel Lipse, after the last payment, did Mr. Lipse object to making and delivering to him the deed on the ground that the purchase money had not been paid?

Ans. Oh, no, not a word as to that. It was only as to his idea that the deed would not be a good one, unless signed by Davy Lipse, and that he didn't want to do anything that would criminate him hereafter.

11 Q. Do I understand from you that all the money received by you from Moses Lipse's estate after the war commenced was Confederate money?

Ans. All except the 1st payment on the land.

12 Q. Did you receive the money during the war all at one time, or at different times?

Ans. I cannot answer that. I have tried to bring that to my mind. I am dumb on that. I cannot answer it.

13 Q. State as near as you can when it was that you presented Samuel Lipse's check at the Bank of Fincastle, and the amount of the check?

Ans. I can tell you the time, but the amount is what stumps me. It was at the February Court in 1863.

14 Q. Was that the last that was coming to you from the estate?

Ans. Yes, sir.

15 Q. You had been down to see Mr. Lipse to receive your wife's interest, and he came with you back to Fincastle, is that correct?

Ans. That is correct.

16 Q. It was on this occasion that your brother-in-law Custer was with you at the Bank, was it?

Ans. You are mistaken. I didn't say my brother-in-law. Joel Custer is my wife's sister's son. It was Joel Custer

31 that was with me at the Bank, transacting business for his mother. We had met at Mr. Samuel Lipse's.

17 Q. Did not Samuel Lipse settle with Joel the same amount for his mother, and in the same way that he settled with you?

Ans. I do not know anything else. I do not know for what amount he received, or whether he received the check at Lipse's or at the Bank. I am certain that it was at the same time and place that I received the check for my wife's share. His business was to settle the matter for his mother, is the way I understood it.

18 Q. Did he collect his check of the Bank?

Ans. That has been a question I cannot answer. I'll answer I don't know, but I think that he did.

19 Q. You state that you met on this occasion, at the Bank, McCreery the Cashier, Col. G. W. Wilson, Rufus Pitzer, and the defendant Glasgow, and that there may have been others, do I understand you to affirm that the language of Mr. McCreery and Col. Wilson, which you regarded "threatening," was uttered by them in the presence of Glasgow?

Ans. I do not think that if Mr. Glasgow had heard it that he would have reproved them.

20 Q. Is it not your recollection that persons were entering and passing out while you were there on that occasion?

Ans. The only two that I recollect of passing out
32 was Mr. Glasgow and Mr. Lipse.

21 Q. The unpleasant words of McCreery and Wilson, I presume then, passed after Lipse and Glasgow had passed out, was it not?

Ans. That is the way it is on my mind. I think that they had passed out.

22 Q. Does it not come within your knowledge that the resident heirs, or most of them, urged the executor Samuel to receive payment in the then currency after the commencement of the war, some wanting it without delay to pay their debts, and others because they preferred to have it to awaiting the results of the war?

Ans. I cannot answer that question.

23 Q. You mention that you owed a debt to a Savings Bank that they would not take in Confederate money, was it the Fincastle Savings Bank?

Ans. Yes, sir; Mr. Woltz was the Cashier.

24 Q. At what date was it the Savings Bank refused to receive Confederate money?

Ans. It was during the time Mr. McCreery was figuring to

get me the Bank money. I think between the February and April courts of 1863 as near as I can come at it.

25 Q. Do I understand you, then, that the Savings
33 Bank of Fincastle was offered payment by you of your note and payment was delivered in Confederate money as early as February, 1863?

Ans. That is true to the best of my knowledge.

26 Q. In running your mill up to August, 1864, did you not sell during that time a good deal of meal to T. K. Menifee, agent at the Furnace, and receive payment in Confederate money without objecting?

Ans. I did not sell them much. I had to keep a mill book, and they assessed me every two months, and they got the tax. They bought some. I mean the revenue officers assessed me. I sold a right smart grain and got Confederate money for some. I got some nails for some grain that I sold Mr. Glasgow.

28 Q. Were you not owing some debts at the beginning of the war to the payment of which you applied part of the fund you received from Samuel Lipse?

Ans. I owed some debts. I do not think that I applied any of this money in that direction.

29 Q. In 1861 and 2, was not land and personal property bought and sold for Confederate money and old debts received in it throughout this country without objection?

Ans. I *recon* in 1861 that is so. I think when Confederate money was first tendered that it passed about with other
34 money is my mind. In 1862 it had depreciated; grain had advanced in proportion to the depreciation, especially towards the latter part of 1862.

30 Q. Was there not a public sale in your neighborhood of the Burwell Farm of 900 or 1,000 acres, with a large quantity of stock and personalty, as late as the early part of 1863?

Ans. There was a sale there. As to the date I cannot speak. I knew that it was during the war although I was not there.

31. Was there not sale publicly made of several valuable tracts of land and large quantity of personal property of Daniel Obenchain's estate, on Mill Creek, in the early part of 1863, and was there not many other sales of property made before and about that time for Confederate money?

Ans. If ever I knew anything about the Obenchain sale I have forgotten about it now.

32. In answer to a question, you have said none of the non-resident heirs have received any part of 2d and 3d payments on the Lipse land from the ex'ors so far as you know, will you state who those heirs are?

Ans. I will say Moses Lipse of Missouri, Christopher Lipes'

children, David H. Lipse, one of Joe Lipse's sons, (Josephus), are all that are in my mind now—the latter persons named of Indiana.

35 33 Q. Have any of these heirs been here since the war, besides David, and how often has David been here since the war?

Ans. Moses Lipse was in here since the war and got his part of the 1st payment. Josephus Lipse was in here twice since the war. I do not think that he got anything. What he got before I do not know. David H. Lipse was here once I know. I am not certain as to whether he was here more than once or not.

34 Q. When did Samuel Lipse die?

Ans. I cannot tell you; cannot give the year nor the day. It is has been something like four years ago.

35 Q. This suit was started under your advice and instant, was it not?

Ans. No, sir, it was not.

36 Q. Who started it?

Ans. It was never worked up by Moses Lipse, Christopher Lipse children, Josephus Lipse and David Lipse.

37. Do you not feel the responsibility of its management, &c.?

Ans. I do.

38. Have you not entered into an arrangement with others as to how it is to be carried on, and how the costs are to be provided for?

Ans. I have, sir.

39. State what are the provisions of that agree-

36 ment?

Ans. This *ques* suit tion has been agitating the minds of the Western heirs since the war and they had taken a great deal of counsel from the best lawyers they could get in the West. After several years of deliberation they arrived at the conclusion that the surest way of getting their money was to bring an action against Spears' ex'or, and asked me, through letters, to take counsel with some of the lawyers in this county, and if they (the lawyers) thought it best to prosecute a suit of this character they would send me a power of attorney to contract with such lawyers as I thought would be best. I wrote to David H. Lipse the proposition that Mays & Mays, & Hansbrough made to me and if that proposition would meet their approbation that I would contract with them for you, (Lipse). He received the proposition and it met with his and their approbation. He, David Lipse, sends me the power of attorney to negotiate for and assist in prosecuting this suit for him.

I also received from Moses Lipse of Missouri a like power of attorney, requesting me to prosecute this suit in their place upon the following terms: 1st. We, the twelve heirs of Moses Lipse, dec'd, each one agree to pay or give to our coun-
37 sel twelve dollars—making $144.00, for which they agree to give us a clear receipt for all costs. They are to retain for their services in this suit 30 per cent. of all that they may realize.

40 Q. The payment of $12 by each of you is all you have to pay to Hansbrough and the Mays' attorneys, and they are to pay all the costs and expenses of the suit. Am I correct?

Ans. Yes, you are correct.

If they succeed in receiving any money, they are to have thirty per cent. of it. If they recover nothing, they are to get nothing, but are to clear you of all costs. Am I correct?

Ans. You are correct.

Note.—Upon reflection, and having my mind refreshed, I am satisfied now that I was mistaken in one of my former answers on cross-examination. I was mistaken as to the time of the death of Samuel Lipse. I now would fix his death as having occurred about three years ago.

Re-Examined by Plaintiffs' Counsel.

1st question. In answer to a question asked you upon cross-examination, you state that David Lipse, when in Virginia, since the sale of the lands referred to, took the advice of counsel touching the bringing of suit for his interest in said lands. State the name of the counsel he consulted, if you know?

Ans. It was Capt. J. H. H. Figgat. David Lipse
38 told me so, and Capt. Figgat also told me so.

2d ques. by same. You stated that you sold Mr. Glasgow some grain from your mill that you were the owner of on Catawba. State whether that grain was sold to him for his own use, or for the use of some else.

Ans. It was for the use of the furnace company for which he was doing business for. This was during the war.

3d by same. State in what year this grain was sold?

Ans. I'll have to guess at it. I have it booked. I cannot speak definitely. I think some time in 1863.

4th by same. State whether or not you are a minister of the gospel, and in regular standing in your church?

Ans. Yes, sir, that is my position in my church.

Note.—Latter question and answer objected to as irrelevant by def'ts counsel.

And further this deponent saith not.

LEVI HUFF.

2d Introduction.

Levi Huff was (again) introduced by Plaintiffs' counsel, and deposed and said as follows:

1st question by plaintiffs' counsel. In your cross-ex. in ans. to the 19th question, you say that Wm. McCreery and Col. Geo. W. Wilson used threatening language to you. Can you state the names of any other persons who used threatening language towards you in regard to your refusal to take
39 Confederate currency in discharge of debts to you?

Ans. Rufus Pitzer is all that I remember of now, except those I have already mentioned in my former examination.

Note.—The foregoing question is excepted to by def'ts counsel.

Qu. 2. Was Rufus Pitzer high sheriff of this county at this time?

Ans. I do not know what position he was occupying at that time.

Qu. 3 Did Maj. Newland, or the enrolling officer, Sperry, inform you at whose instance the proceedings against you for disloyalty were instituted, or were you furnished by either of said officers with a copy of the charges and specifications against you?

Note.—Question objected by def'ts counsel.

Ans. He simply said to me that he had a warrant sent to him from Lee's headquarters, is the way I understood it, for "your (my) arrest." I didn't read *it*.

Re-Cross Examined by Deft's Counsel.

1 Q. Was there Confederate money paid to you by the executor, Samuel Lipse, on any other occasion than the one just mentioned?

Ans. I have no recollection of receiving any other Confederate money of Sam'l Lipse than for the draft or check
40 mentioned; nor do I remember whether I ever received any money on that from the Bank.

2 Q. Are you confident that this check was the last money received by you from the executor on your interest in the estate?

Ans. That is the way it is on my mind.

And further this deponent saith not.

LEVI HUFF.

3d Introduction.

Levi Huff was (again) introduced at his own instant, and deposed as follows:

1st question by Plaintiffs' counsel.

Counsel for def'ts objected to the examination of the witness on same grounds as to his former examination.

Questions by Counsel for Complainants:

(1). The 19th question on cross-examination by the defendant's counsel you are asked, "you state that you met on this occasion, at the Bank, McCreery the Cashier, Col. G. W. Wilson, Rufus Pitzer and the defendant Glasgow, and that there may have been others, do I understand you to affirm the language of Mr. McCreery and Col. Wilson, which you regarded as threatening, was uttered by them in the presence of Glasgow." To that question your answer is as follows: "I do not. I think that if Mr. Glasgow had heard it that he would
41 have reproved them" and in the 20th question on such cross-examination you are asked:

"Is it not your recollection that persons were entering and passing out while you were there on that occasion?"

To which question you answered as follows:

"Ans. The only two that I recollect of passing out was Mr. Glasgow and Mr. Lipse."

And in the 21st question on such cross-examination you are asked:

"The unpleasant words of McCreery and Wilson, I presume then, passed after Lipse and Glasgow had passed out, was it not?"

To which question you answered as follows:

"Ans. That is the way it is on my mind. I think they had passed out."

Now, I ask you to state whether or not on reflection you are prepared to say that those answers to those three questions are correct, and if they are not correct, state fully and carefully your answers to those questions.

Ans. The answer to those three questions are not correct. I would now say that the language used by McCreery and Wilson and Rufus Pitzer was not addressed to me. McCreery was talking to Joel Custer at the time and Col. Wilson and Rufus Pitzer were addressing themselves to those in the Bank —just talking right out. As to those who were in the
42 Bank I would say, Joel Custer, Samuel Lipse, Mr. Glasgow, Rufus Pitzer, Col. George Wilson and myself were all that I recollect of being in the Bank at the time. Whilst Mr. Wilson, McCreery and Pitzer were talking, Mr. Lipse and Mr. Glasgow were standing near the door in consultation about the deed and walked out together. There were no persons coming in than those that were in as I have named as I recollect of. Whilst the conversation was passing between those gentlemen, McCreery, Wilson and others, Mr. Lipse and Mr.

Glasgow were engaged in conversation near the door, and during the conversation of McCreery and Wilson and others, Glasgow and Lipse passed out. How long they (Glasgow and Lipse) were talking during the conversation of Mr. McCreery and others, I cannot now say. They were all in the Bank there together. In regard to the saying as to esteeming Mr. Glasgow as a gentleman, I thought that if he had been present when Mr. McCreery assaulted me personally, I did think that he would have reproved him or corrected him. Now, that was the opinion I had, or entertained of him (Mr. Glasgow) up to the time that I presented my claim to Mr. McCreery for payment, and still thought Glasgow my friend. Begging
43 Mr. McCreery for $100 of the Fincastle money, he (McCreery) promised me that he would use all his influence with the officers of the Bank, and procure for me the $100 desired, Glasgow being President, as I thought, of the Bank, would be able to get the $100 I asked for. I made three or four different efforts to get the $100, and as often failed. I thus concluded that Mr. Glasgow was not the friend of mine I had thought he was. Therefore, I concluded that his friendship towards me was for the purpose of getting the Confederate money off his hands, my right and interest notwithstanding. The time McCreery attacked me as disloyal and deserving imprisonment for contending for Fincastle money, Glasgow was not present then. Neither were Custer nor Lipse, was the reason I said I thought he (Glasgow) would have shown me some favor or protected me.

Cross-Examined by Def'ts Counsel.

1 Q. What has wrought such a remarkable change in your testimony since you were examined before?

Ans. Prayerful meditation. I wanted to come as near the truth as I know how.

2 Q. In your former examination you said that you were a preacher, I think, is it so?

Ans. Yes, sir.

44 3 Q. In what denomination?

Ans. We are known as the *Tun*ker Church; sometimes called Dunkards.

3 Q. Is it not a principle of that Church to oppose war and carrying arms, and were they not exempted from military service for that reason?

Ans. Yes, sir.

4 Q. Was not Samuel Lipse a member of that Church?

Ans. Yes, sir, he was.

5 Q. You say that the change of your testimony was from

"prayerful meditation;" state whether or not suggestions respecting your testimony have been made to you by others.

Ans. Nothing with regard as to what testimony I shall give in to-day, or at any other time. I was satisfied before getting home that I had not finished one sentence. I have given that whole sentence here this morning.

6 Q. You state that you were satisfied before getting home that you had not finished one sentence, and that your testimony would be corrected; am I correct?

Ans. Yes.

And further this deponent saith not.

LEVI HUFF.

4th Introduction.

45 Levi Huff, a witness heretofore examined, was introduced and deposed and saith as follows:

Do you desire to make any correction of your testimony heretofore given, or any part thereof, and if so, please make any correction you may desire.

Note.—The counsel for defendant desires the Court at this point to note the fact that after the witness had taken the stand, and during the time the foregoing question was being written, that Plaintiff's counsel had a conversation with the witness.

Ans. I was requested by defendant's counsel to give a statement of the contract or article of agreement or contract that myself and counsel had entered into in regard to the present suit. The article of agreement was entered into December 9th, 1878. Since the execution of the contract I saw nothing of it, had no copy of it, until last Monday, the 23d of this month. I then saw by looking over the article that I had erred in my answer in regard to the amount the heirs agreed through me to pay to Mays & Mays and Hansbrough for the getting up and prosecuting the suit. My statement was that we had articled for one hundred and forty-four dollars; *in this* I was
46 wrong. The article expresses only one hundred and thirty two dollars. That of course is our contract.

Note.—At this point the defendant objected to any testimony being introduced referring to an article between witness and Mays and Hansbrough without the production of said article.

At this point the article was placed in the hands of witness and exhibited, and testimony continued as follows: I think I said in one of my answers on cross-examination that the $144.00 was to pay all costs growing out of this suit, for which they were to give me a clear receipt, for, examining the contract, I find that it (the article) says nothing about a receipt in full for

all costs or any one binding themselves to pay any costs, except the $132, which the heirs agree to pay to Hansbrough, Mays and Mays. I have given the substance of my answer. I do not know that I have given it here before. This is the correction I desire to make.

2d quest. Is there anything else in your contract to the effect that your counsel are to pay the costs of this suit.

Ans. No, sir.

47 3d quest. What use was to be made of the $132.00 of which you have spoken; state whether or not it was not to be applied to the preparation of this suit and the contingent expenses?

Note.—Objected to as illegal for the reasons above given and also as leading.

Ans. Of course it was. The heirs agreed to pay the supposed costs of the suit.

4th quest. You have been spoken of in the former depositions, taken in this course, as having had something to do with the bringing of the suit. State what you know touching the bringing of said suit; also whether some of the heirs and distributees of Moses Lipse, dec'd, had not been in correspondence about bringing suit long before you ever spoke to your counsel in this suit. State what you know.

Note.—Objected to as leading and otherwise illegal.

Ans. With regard to me being engaged in bringing this suit during the lifetime of Samuel Lipse, there was counsel taken by some of the western heirs in regard to a suit of this kind corresponding then with Samuel Lipse upon the topic of bringing a suit. Samuel Lipse died before the heirs, and him (Lipse) entered suit, me being the next surviving heir or last. I was living in the county; after his death they corresponded

48 with me; I think I received one or two letters from Josephus Lipse relative to this matter; came to no definite conclusion, yet Moses Lipse, who lived in Missouri, was corresponding with Harvey Lipse, Samuel Lipse's son and administrator, telling him in these letters that he was not satisfied to have his part of his father's estate, and if Davy Lipse and him (Harvey Lipse) did not make an effort to get his money that he (Moses Lipse) would sue him and David Lipse for his interest. D. D. Lipse, that is Christopher Lipse's son, wrote to me that he was not satisfied, and not willing to have his interest in his grandfather's estate without making a trial to recover their money, writing to each other devising a plan upon which they could unite and be satisfied with the results; they with myself and all the heirs that I heard from, was willing to risk suit of this kind, and proposed to me to see some lawyers and

ask them to examine the record and see what they thought the chance for getting their interest was. I *done* as they asked me. I consulted Hansbrough, Mays & Mays and we agreed to prosecute a suit of this kind. I wrote the propositions
40 that these men made to me to the different heirs, and they accepted of the proposition made by our employed counsel. We then entered into the present article of agreement. No suit as yet brought at that time. They then sent me power attorney from two of the heirs, which was David H. Lipse and Moses Lipse, authorizing me to prosecute this suit for them. That much I was interested.

5 quest. Does it come within your knowledge that some of the heirs of Moses Lipse, dec'd, when negotiating for a suit to recover their interest in the estate of Moses Lipse, dec'd, before you were empowered to bring the suit now depending, and before employing counsel to bring this suit?

Note.—Objected to as leading.

Ans. That was my information.

6th quest. State if you know the names of the counsel they were negotiating with?

Ans. I can give the names of the counsel from information. They were negotiating with Hill, Manhall and Lee, of Craig county.

7th quest. Do you know anything of a newspaper published in Fincastle in the year 1863?

Ans. Yes, I think I have some knowledge of such a paper.

8th quest. State if you have any knowledge of a notice
50 published in said paper during the year 1863, notifying the debtors of the Fincastle Savings Bank to come forward and pay up their indebtedness?

Ans. I do not. Had I known it I should certainly have taken the benefit of it. I knew I owed that debt, and having Confederate money here in the Farmer's Bank and also at home sufficient to have paid that debt, I think I certainly would have paid the debt.

9th ques. Was you a subscriber to that paper?

Ans. I do not recollect. I don't think that I was though.

Cross-Examined by Deft's Counsel.

1st question. Please to state if when you were introduced just now, you did not hand to the Commissioner the paper now placed on file with him and request him to enter from it a correction of your evidence heretofore given?

Ans. I did. It was not my intention to have him enter from it a correction of my evidence heretofore given. The object of that paper was simply to refer me to the number of

the question which I felt that it was due to myself to make such correction, upon questions as would bring them in keeping with our contract.

[Here paper marked Exhibit No. 1 was filed by
51 def'ts counsel.]

2 Q. That paper is in the hand writing of your counsel, F. H. Mays, is it not?

Ans. Yes, sir.

In answering the first question propounded to you by Mr. Mays did you not request the paper? and did not the defendant object to your seeing it then and withhold it from you?

Ans. Yes, I did. He did object to me having the paper and he, Glasgow, did withhold the paper from me.

4 Q. That paper was prepared for you by Mr. F. H. Mays, in his office, was it not?

Ans. I prepared it myself, and asked him to write it out, as I am not a good scribe.

5 Q. State whether you first stated the contract in your evidence, heretofore, both F. H. Mays and R. F. Mays were not present, and if each of them did not openly then say in the presence of the Commissioner and parties that you had stated the contract correctly?

Ans. That was their opinion so expressed as well as mine.

6 Q. Did you not at that time say that you had a copy of the contract, but that it was not present with you?

Ans. No, sir, I did not. I never saw the contract was a copy from the time it was executed till Monday last, the 23d day of February.

7 Q. Did you not, about February court, meet with
52 your counsel, Hansbrough, in Fincastle, and did he not express to you his dissatisfaction with the testimony you had given and require you to take the witness stand again?

Ans. He told me that my statement was not according to the contract, was about his statement to me. He did not tell me that I should take the stand again, but I told him that I intended to take it again.

8 Q. You stated, in answer to a former question with reference to what occurred in the Bank between yourself and Custer and McCreery, Pitzer and Wilson, that if Mr. Glasgow had been present he would have reproved them, did not your counsel, Col. Hansbrough, on this occasion just referred to, that is about Feb. court, tell you that your favorable mention of Glasgow was unfavorable to your case, and did you not afterwards determine to change it?

Ans. He never made no such remarks to me, to my knowledge.

9 Q. Do you mean to leave the impression that Col. Hansbrough did not tell you in substance that such favorable mention of the defendant Glasgow, and your answer saying
53 that Glasgow passed out of the Bank before the unpleasant conversation referred to, was injurious to your case?

Ans. No, he did not; he never used that language. If he had I would have told him what I thought.

10 Q. Did not Col. Hansbrough tell you, in substance, that your testimony, as originally given, did you more harm than good? I don't want the language, but the substance.

Ans. He did not. If he had I would have told him that it was none of his business.

11 Q. If your counsel was not dissatisfied, what made you so much dissatisfied with the evidence you had given?

Ans. Hansbrough just remarked to me that my statement was not in keeping with the article; he was not criminated, but I was, therefore I asked him to send me the article to Fincastle. It was in Salem, or at least it was not here. He agreed to do so.

12 Q. The paper you have shown as your contract with Hansbrough & Mays is simply your note or obligation to them and signed by you alone, where is the paper of which you spoke of executing with them under power of attorney first obtained from the Western heirs and which was signed by Hansbrough & Mays?

Ans. That is all the paper that is between us.

13 Q. Did your counsel, on reading your evidence
54 as first given, express himself as satisfied with it all except what you said about your contract?

Ans. He said nothing about it more than that my "statement was not in keeping with our contract."

14 Q. In your answer to the 17th question of plaintiffs, in your first examination, you say "I couldn't pay some debts that I owed with it; one debt was Fifty dollars to Mrs. Woods," who was this Mrs. Woods, and where does she live?

Ans. It was Betty Woods out here. She lives five miles out of town on the Blacksburg road. Polk's Woods widow.

15 Q. Her son married your daughter, is it so?

Ans. Yes, sir.

16 Q. She is now aged and feeble in mind and body, is she not?

Ans. She is a stout woman for her age. Her mind is good. Her physical powers are failing as all *all* old people's do.

17 Q. Do you affirm that before February court, 1863, you had offered her payment of your debt, and that she refused to receive it because your offer was Confederate money?

After the words "within a mile or so of it," at the end of of the fourth paragraph in the answer to the second question on page 195, insert the following:

"I found him at his house and ~~prepared~~ prepared to make the payment. I do not remember whether I counted the money
59 as has been said or not; I presume I was prepared with money to make it. I remember that he expressed some disinclination to receive it at the time and desired to defer it. I think something was said about the danger of keeping so much money by him in his house. I think he also stated his desire to see some parties before he closed it up. I am sure he suggested that he preferred to have the money at Bank. He may have raised some question about the goodness of the currency. If he did I do not remember, but I do remember that he told me he would come in a few days to see me about it. On the 23d Oct., 1862, he called to see me in my office in Fincastle and told me he was ready to receive payment of the balance on the land. I gave him a check for it on the Farmers Bank of Fincastle, not more than 50 steps distant, which he accepted without objection. He claimed nothing more than the principal money, stating that as I was ready to pay when it was due that I ought not to pay interest, and it was no difference to him. I mentioned to him at the time that I would look into the matter of the Deed; that I was inclined to think he and his brother ought both to unite in the conveyance."

After the words "other claims," at the end of the
60 fifth paragraph in the answer to the second question on page 196, insert the following:

"I therefore on the first opportunity called the attention of Samuel Lipes to it. I do not remember what passed between us. He may have consulted, and I have no doubt did with his counsel, as I have reason to believe he did as to all important steps taken by him in the business. Certain it is he made no objection to executing the Deed, and did execute and acknowlenge in due form the Deed referred to in this cause to me as Executor of Spears. I will further add that in all this business I never had an unpleasant interview with Samuel Lipes, nor did he ever make refusal to make conveyance of the land or express any dissatisfaction about it. On the contrary he expressed his readiness at any time I might wish it to execute the Deed after he had received the last payment and desired me to have a good title. I have never had business transactions with any one who appeared better to understand what we were doing and who appeared more decided in his approval of what he did."

After the word "Executors," at the end of the sixth paragraph in the answer to the second question on page 196, insert the following:

"That and the transactions before stated covers all
61 of my transactions with the Lipes'. My intercourse with Samuel Lipes continued to be pleasant while he lived. He never, by word or question, questioned my fairness with him pertaining to this business. I am sure that I enjoyed his friendship and confidence while he lived."

After the word "counsel," at the end of the seventh paragraph in the answer to the second question on page 197, insert the following:

"Some time after the transactions mentioned, I think it was after the war, Samuel Lipes informed me that he had paid over some of 'the Estate Funds' to J. G. ———, the Confederate confiscating officer, and apprehended some trouble about it, but he never expressed to me any blame of myself or Spears concerning the business."

The depositions of Mrs. Jane McWilliams and Miss Rebecca A. Glasgow were omitted, being copied in the record, and are in the words and figures following, to-wit:

Mrs. Jane McWilliams, being duly sworn on the Holy Evangelists of Almighty God according to law, answering
62 deposeth and saith as follows:

1st question by defendants counsel. Please state your age and where you resided in the year 1862 and whether you were acquainted with the family of Wm. A. Glasgow, one of the defendants to this suit?

Ans. I am sixty. I lived in Fincastle, Botetourt county, in 1862. I was acquainted with Mr. Wm. A. Glasgow's family.

2dly by same. Were you acquainted with Chas. C. Spears, dec'd, and what relation was he, if any, to the late wife of Wm. A. Glasgow?

Ans. I was acquainted with him. He was the brother of the late Mrs. Glasgow.

3dly by same. Please state if you know when the late Mrs. Glasgow died and what was her christian name?

Ans. She died in the month of February, 1862. Her christian name was Elizabeth.

4thly by same. Please state if you know when the late Chas. C. Spears died?

Ans. In the month of September, 1862.

And further this deponent saith not. The counsel for plaintiffs not desiring to cross-examine or ask any question.

JANE McWILLIAMS.

63 Miss Rebecca A. Glasgow being next duly sworn according to law, answering deposeth and saith as follows:

1st question by defendants' counsel. Please state your age and what relation you are to Wm. A. Glasgow the defendant to this suit?

Ans. I am just fifty-three. I am his sister.

2dly by same. Who was Wm. A. Glasgow's first wife and what relation, if any, was she to the late Chas. C. Spears?

Ans. She was Elizabeth Spears, sister to the late Chas. C. Spears.

3dly by same. Please state when she died, also when the late Chas. C. Spears died?

Ans. She died in February, 1862, and he died in September, 1862. The counsel for plaintiff not examining the witness.

And the further this deponent saith not.

REBECCA A. GLASGOW.

The foregoing portions of the testimony of Wm. A. Glasgow, ruled out by the Court as incompetent testimony, of copies of the depositions of Mrs. Jane McWilliams and Miss Rebecca A. Glasgow are true copies.

[SEAL.] Teste: F. W. RIVES,
Clerk U. S. Cir. Ct. W. D. Va.

117-327

EXTRACT FROM ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, 1876–77, pages 265–6.

CHAP. 256— An ACT to amend and re enact section 22, chapter 172, Code of 1873, in relation to parties to suits testifying in certain cases.

Approved April 2, 1877.

1. Be it enacted by the general assembly, That the act to amend and re-enact section twenty two, chapter one hundred and seventy-two of the Code of eighteen hundred and seventy-three, in relation to parties to suits testifying in certain cases, approved twenty-first March, eighteen hundred and seventy-seven, be amended and re-enacted so as to read as follows:

§ 22. Nothing in the preceding section shall be construed to alter the rules of law now in force, in respect to the competency of husband and wife as witnesses for or against each other during the coverture, or after its termination, nor in respect to attesting witnesses to wills, deeds, or other instruments; and where one of the original parties to the contract, or other transaction, which is the subject of the investigation, is dead, or insane, or incompetent to testify by reason of infamy or any other legal cause, the other party shall not be admitted to testify in his own favor, or in favor of any other party having an interest adverse to that of the party so incapable of testifying, unless he shall be first called to testify on behalf of such last mentioned party, or unless some person having an interest adverse to that of the party so incapable of testifying shall have previously testified to some fact occurring before such inability accrued; or unless the contract or other transaction which is the subject of the investigation, was made or had with the agent of the party so incapable of testifying, who is alive and competent to testify; or unless, in the case of partners or other joint contractors, when the person who has become incapable of testifying was not the only partner or other only joint contractor with whom such contract or other transaction was personally made or had; and when one of the parties is an executor, administrator, curator, or committee or other person representing a dead person, an insane person, or a convict in the penitentiary, the other party shall not be permitted to testify in his own favor, unless such contract or other transaction was originally made or had with a person who is living and competent to testify, except as to such things as have been done since the powers of such fiduciary were assumed, and except, also, when some other party in interest has previously testified; or unless some person having an interest adverse to the party so incapable of testifying, shall have previously testified as aforesaid: provided however, that no witness who would have been competent to testify as the law stood before the passage of this and the preceding section, shall be rendered incompetent hereby.

2. This act shall be in force from its passage.

117-327

Supreme Court of the United States.

SPEARS' EX'OR v. LIPSE'S EX'OR, &c.

ASSIGNMENT OF ERRORS AND NOTE BY APPELLANT'S COUNSEL.

BELL'S STEAM PRINT, LYNCHBURG, VA.

Supreme Court of the United States.

SPEARS' EX'OR v. LIPSE'S EX'OR, &c.

ASSIGNMENT OF ERRORS AND NOTE BY APPELLANT'S COUNSEL.

STATEMENT OF CASE.

The will of Moses Lipse, dated 5th day of December, 1859, was proved and admitted to record by the County Court of Botetourt County, Virginia, at its May term, 1860. By it the testator, after providing for the payment of his debts, directed that all his estate, real and personal, should be sold by his executors, and the proceeds divided equally between his twelve children, each of whom was required to account for certain advancements. He appointed his sons, Samuel H. and David H., executors, both of whom, at the June term, 1860, of said Court, qualified by giving one bond with securities in the penalty of $30,000. (See will at pp. 12, 13, and the bond at p. 45 of printed record).

The executors sold the personal property and attempted to sell the real estate at auction in August, 1860; but, failing to get their price, it was taken in. They then agreed upon a price which they would take for the land, and thereupon David Lipse departed for his home in Indiana, leaving his co-executor, Samuel H. Lipse, thereafter to conduct and close up the administration. (See D. H. Lipse's depos. at pp. 92, 93, ques. and ans. Nos. 6, 8, 21.) On the 10th of September, 1860, David H. Lipse, by a contract in writing (signed apparently by both executors, though David says *he* never signed it) sold the real estate to Charles C. Spears for $14,858, of which one-third part was paid on the 3d day of October, 1860, and the residue

in two equal annual installments, on the 3d days of October, 1861 and 1862, without interest (contract on p. 31).

Charles C. Spears, the purchaser, was a young man who had just left school. He inherited from his father, who died several years before, ten or twelve thousand dollars, which, at the time of this purchase, he held in "money and good securities." In the Spring of 1860 he had married a lady who owned a tract of land which soon after this purchase they sold for $5,000. These resources furnished the basis for the purchase of the Lipse land (Glasgow's dep. pp. 112, 113, q. 2d).

In the Spring of 1861 young Spears entered the Confederate army, leaving all his affairs in the hands of W. A. Glasgow as his agent and attorney. During the Summer of 1861 Samuel Lipse, executor, called on Glasgow to know if Spears would be able to make his first deferred payment for the land, to fall due on the 3d day of October, 1861. Glasgow informed him that he had been making arrangements to meet the payment, but doubted whether he would be able to pay all to the day. The bond was paid—$3,000 at one time, and $1,952.57 at another, Lipse, executor, calling each time to collect the money. It will be seen by Samuel Lipse's recorded settlements, p. 34 of Pr. Rec., that he charged himself with this bond on the 3d day of October, 1861—the day it was due. This payment was not made in Confederate money, which did not become the currency of the country for some time thereafter (see depos. of N. Switzer, p. 78, q. 3, and Green James, p. 82, qq. 4 and 5). The whole of this payment, together with $1,482.33 of other money belonging to the estate, was distributed by Samuel Lipse, executor, as of 3d October, 1861, and nine of the twelve legatees—all that were living within the Confederate lines—received their shares without a word of objection. The shares belonging to the non-residents were by the executor charged to himself, and his account, settled before the Commissioner of Accounts, was duly reported to and subsequently confirmed by the County Court (Rec. pp. 34–5).

Before the second and last payment became due, young Spears was killed in battle, leaving a widow and infant child.

By his will he constituted Mr. Glasgow his executor, who paid this last bond on the 23d October, 1862—just twenty days after it was due—a tender of payment having been made in Confederate money at the maturity of the bond. As this is the only transaction about which any question can possibly be raised, we will introduce here all the testimony bearing upon it. In the answer of W. A. Glasgow, executor, he states his recollection of the matter as follows (see Pr. Rec. pp. 59–60):

"On or about the 3d day of October, 1862, when Spears' last land payment became due, respondent went to see the executor, Samuel Lipse, at his house to make the payment. When he stated to him his business, the said Samuel expressed some unwillingness to receive it, and said that he desired to see some persons before doing so. Respondent does not remember that he stated objection to the currency; it was well understood that it was not a legal tender, and that it was optional with him whether he would receive it. Respondent does not remember to have seen the said Samuel again until the 23d day of October, 1862. On that day the said Samuel came to the office of this respondent in Fincastle, some eight miles from the residence of the said Samuel, bringing with him Spears' bonds, and soon after entering the office mentioned to respondent his business to collect the payment, and observed that he had seen most of the heirs, and that they wanted their money; that he had consulted with counsel, and concluded to take it, if respondent was still ready to pay; respondent expressed his readiness and told him that he still had the money in the bank, and thereupon gave him his check for the amount, not having a doubt of its being a fair and honorable discharge of the balance due from Spears on the land, and felt assured by what transpired that it was entirely satisfactory to Lipse's ex'or.

"And Lipse having thus accepted payment of Spears' liability in the currency of the country, respondent received without objection, in the same currency, large amounts due Spears' estate, on debts of like character contracted and payable before the war."

The only testimony introduced by the plaintiffs below, was that of Catharine McCluer and Esther Lipse. The deposition of the latter was rejected by the Circuit Court, on the ground of incompetency. Miss McCluer's deposition on this point is as follows: (see Rec. pp. 65 66.)

"2. State whether or not you saw there at the house of Samuel Lipse, Mr. Wm. A. Glasgow, about that time (fall of 1862).

Ans. Yes, sir; I saw him there.

3. State what did he announce to be his business there at that time, if he did tell his business.

Ans. He said he came to pay the balance on the land purchased by Mr. Spears of Mr. Moses Lipse's estate.

4. State what he produced, if anything.

Ans. He fetched Confederate money there, and counted it out on the candle-stand.

5. Was the bundle of Confederate money a large one or was it a small one?

Ans. It looked like a right large bundle.

6. Did you or did you not see him count out the Confederate money?

Ans. Yes, sir; I saw him count it out.

7. Did or did not Samuel Lipse accept or receive the said Confederate money in payment of the said balance of the purchase money due on the said lands?

Ans. No, sir; he would not take it.

8. If Samuel Lipse said anything in answer to Mr. Wm. A. Glasgow's offer to pay him for the said land in that Confederate money, in your presence, tell what Mr. Samuel Lipse did say?

Ans. He said that he would not take it; that it was no account.

9. State if you know what Mr. Glasgow then *did*.

Ans. He asked him if he would give him a check on the Fincastle bank if he would take it. (That is the check.)

10. What did Samuel Lipse say to this offer?

Ans. He said that he would take the check.

11. If Samuel Lipse gave any reason for taking the check state what it was.

Ans. He gave his reason, but whether just in Mr. Glasgow's presence or not I do not know. I heard him (Lipse) say that he would take the check as he thought he would get Fincastle money for it, but whether Mr. Glasgow was present when he said this I cannot say.

12. Did or did not Mr. Glasgow take the Confederate money away with him from Mr. Samuel Lipse' house?

Ans. Yes, sir; he took it away with him.

13. Did or did not Mr. W. A. Glasgow then, at the house of Mr. Samuel Lipse, give Mr. Lipse the check which you mentioned?

Ans. No, sir; I do not think he did."

In Mr. Glasgow's deposition, taken some time after his answer above quoted was filed, he states what occurred as follows: (see Pr. Rec. p. 158)

"I found him at his house and prepared to make the payment. I do not remember whether I counted the money as has been said or not; I presume I was prepared with money to make it. I remember that he expressed some disinclination to receive it at the time and desired to defer it. I think some-

thing was said about the danger of keeping so much money by him in his house. I think he also stated his desire to see some parties before he closed it up. I am sure he suggested that he preferred to have the money at bank. He may have raised some question about the goodness of the currency. If he did I do not remember, but I do remember that he told me that he would come in a few days to see me about it. On the 23d Oct., 1862, he called to see me in my office in Fincastle and told me he was ready to receive payment of the balance on the land. I gave him a check for it on the Farmers Bank of Fincastle, not more than fifty steps distant, which he accepted without objection. He claimed nothing more than the principal money, stating that as I was ready to pay when it was due that I ought not to pay interest, and it was no difference to him. I mentioned to him at the time that I would look into the matter of the deed; that I was inclined to think he and his brother ought both to unite in the conveyance."

From this evidence it will be seen that Mr. Glasgow made no effort whatever to persuade or induce the executor to receive the money or the check in payment of the last bond. It thus appears that the executor received payment after deliberate reflection, and after consulting with a number of the legatees and with his legal adviser.

This executor at once proceeded to distribute this last payment. He reported it, as he had reported the previous payments, to Commissioner Logan, whose report will be found on page 35 of the printed record. Three-fourths of the legatees in a short time afterwards came forward, received their shares without a word of objection, and the whole estate was soon thereafter closed by a final report of the Commissioner of Accounts of the balances due from the personal estate. These personal assets had all been received by the executor in good money years before, and yet we find eight of the twelve legatees and five children of another coming late in the war, when Confederate money was greatly depreciated, and receiving their shares without objection and giving to the executor final and full receipts.*

From the receipts of several legatees filed with Commissioner Logan's report, it appears that of twelve legatees of Moses

*NOTE.—The Court will observe that while Commissioner Logan's report appears to have been made at one time and that at the close of all the executor's transactions, this was not really the fact; as the receipts given by the legatees show that the amounts of each distribution had been previously ascertained by the Commissioner.

Lipse, the following receipted in full for their shares, both in the realty and in the personalty of their father's estate, viz:

1. Samuel Lipse.
2. Daniel Lipse.
3. Jacob Custer and wife.
4. D. Craft and wife.
5. John Lipse.
6. P. Brownlee and wife.
7. M. P. Boreing and wife
8. Levi Huff and wife.

9. Of the share of Joseph, all his six children except Joseph, received what was coming to them in full. See all these receipts on pp. 38, 39, 41, 42, 43, 44 and 45 of printed record.

No part of the shares of David, Christopher and Moses, in the two deferred installments of purchase money appears to have been paid to them by the executor. The shares, or rather a part of the shares, of David, Christopher and of Joseph, a son of Joseph, were confiscated and paid over by Samuel Lipse, executor, to the Confederate States receiver. The share of Moses was never confiscated and remained intact to the end of the war in the hands of the executor.

The legal effect of the executorial settlements before the Commissioner of Accounts, and their approval by and recordation in the County Court will appear from the following provisions of the Code of Virginia, 1860, ch. 132, §§ 7, 21, 22 and 23:

"7. A statement of all the money which any personal representative, guardian, curator or committee, shall have received or become chargeable with, or have disbursed within one year from the commencement of this act, or, if his authority be derived hereafter, within one year from the date of the order conferring his authority, or within any succeeding year, together with the vouchers for such disbursements, shall, within six months after the end of every such year, be exhibited by him before a commissioner of the court, wherein the order was made, conferring his authority." * * * *

"21. The commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after its completion, and shall, with his report, return such of the vouchers or evidence before him, as any person interested may desire him to return, or as he may deem proper.

"22. The court, after one month from the time the report may have been filed in its office, shall examine the same, with such exceptions thereto as may be filed at any time before such examination. It shall correct any errors which may appear on the exceptions; and any appearing on the face of the account, whether excepted to or not; and to this end, may recommit the report to the same or another commissioner, as often as it sees cause; or it may cause a jury to be impaneled, to enquire into any matter which, in its opinion, should be ascertained in that way; or it may confirm the report in whole or in a qualified manner. The clerk shall, in a book kept for the purpose, record every report which may be so confirmed, and, at the foot of it, the order of confirmation. Any vouchers or other evidence remaining with the commissioner, at the time of such confirmation, and not wanting for any further matter of enquiry before him, shall be returned by him to the party who filed the same.

"23. The report, to the extent to which it may be so confirmed, shall be taken to be correct, except so far as the same may, in a suit, in proper time be surcharged or falsified."

See also *Newton v. Poole*, 12 Leigh's Rep. 112, at pp. 142-3; *Peale v. Heckle*, 9 Grat. 437, at p. 445, and *Butterfield v. Smith*, 11 Otto, 570. *Blackwell's Adm'r v. Bragg*, 78 Va. 529.

The estate of Moses Lipse, thus finally settled, remained in that condition from the 14th day of November, 1864, when this final report was confirmed, until the 3d day of February, 1879, when this suit was instituted—a period of nearly fifteen years. About five years before this suit was commenced, David H. Lipse, the Indiana executor, visited Virginia, to look into the affairs of this estate. His brother and co-executor was then living. They had full conference with each other and with other legatees of the will of Moses Lipse. David H. employed counsel to investigate his brother's executorial transactions, and they examined the record of his final settlements above referred to. The result was a conclusion that if he or others interested had a claim against any one on account of these transactions, it was against Samuel Lipse only, who had collected and solemnly charged himself with all the assets of the estate. David H. Lipse then declared that if his only remedy was against Samuel, he would not vex his brother with a suit.

With this conviction, David H. returned to Indiana, and

nothing was heard of this controversy *till after the death of Samuel H. Lipse.* A number of the legatees, through their attorneys, had threatened to "prosecute the executors for not prosecuting a suit to recover their interests." This, it seems, led to negotiations which resulted in an agreement between all the parties interested, *except the heirs of Christopher Lipse*, to institute this suit. The heirs of *Christopher were, for this reason evidently, not made parties plaintiff or defendant, either by the original or cross bill.* Such of the parties as were supposed to live out of the State of Virginia were made plaintiffs; those who lived in Virginia were made defendants. By a cross bill the resident legatees asserted their claims against the estate of Spears. Both sets employed the same counsel, and so made common cause against Spears' estate, but claimed nothing against Samuel H. Lipse, executor.

THE CASE AS MADE OUT IN THE BILLS.

The case, stated in the bills, is as follows: After setting forth the sale to Spears, the payment of one-third of the purchase money in cash and the execution of the bonds for the two deferred installments, the bill avers that "No part of the second and third installments of the said purchase money was ever paid" by Spears in his lifetime or by his executor since his death to the executors of Lipse jointly or to either of them separately; that said purchase money was payable only in "legal-tender money" and could be discharged only by the payment of such money; that while the rebellion was flagrant "the executor of Spears, in person or by his agents did, in the months of March and April, 1863, contrive and execute a plan to obtain a deed of conveyance of the said tract of land to him, as executor of said C. C. Spears, deceased, without first having fairly paid and lawfully discharged the just claim theron of the estate of Moses Lipse, deceased, for the second and third installments of purchase money;" that said executor of Spears, well knowing said debt could be discharged only in "legal-tender money; that the complainants in original bill were residing in Indiana," fortified with an act, passed 5th March, 1863,

by the Legislature then assembled at Richmond, in Virginia, and (it is said) intended to meet this very case * * * * and armed with all the Confederate enactments for sequestrating the property of alien enemies within the limits of the insurgent States, and loaded with the Treasury notes issued by the said Confederate States, he, Spears' executor, sought the resident executor of Moses Lipse and proposed and insisted that the latter should receive said Confederate currency in payment of said unpaid installments of purchase money.

"In vain, Samuel Lipse refused to receive such currency; disavowed his right as executor to do so; claimed that the debt was payable in the lawful money of the United States, and that he could receive none other, and urged that his co-executor, D. H. Lipse, and half of the legatees, were residents of the United States, and could not, and would not, receive such currency, and that neither himself nor the resident legatees were willing to receive the same in payment for said land, and that even if he should receive it, he *alone* could make no valid conveyance, and that his co-executor must necessarily join in the deed to make it valid. All of these objections availed nothing to defeat the purpose of Spears' executor, who represented then to Samuel Lipse that the said "act" had been passed *to meet the case*, and to authorize him, alone, to make the conveyance, and that he was compellable to make it, and in fact he environed the resident executor with a net of circumstances, which he designed and were sufficient to control that perfect freedom of will and action which the resident executor was entitled to exercise in the matter, and which net of circumstances was tantamount to, if not technical, at least to moral duress. At length, *under such compulsion*, he did receive a check drawn by Spears' executor, on the bank of Fincastle, in Botetourt county, for the amount of the unpaid installments of the purchase money, which check, however, was never paid by the said bank, though due diligence was used to present the same and demand payment of the sum of money for which it was drawn; the said bank *refusing* to pay the same, except in said Confederate currency, Spears' executor having deposited in the bank Confederate currency, only wherewith to meet the said check. And the said Samuel Lipse, under the compulsion aforesaid, did deliver up the bonds which had been given for said installments, and did execute the deed dated the 7th day of April, 1863, purporting to convey said land to William A. Glasgow as Spears' executor."

This statement of the plaintiffs' case, when contrasted with

evidence afterwards produced, is, to say the least, a most extraordinary one. Never was there a more striking instance of variance between *allegata* and *probata*. The Court will particularly observe that every charge of fraudulent or wrongful conduct against Mr. Glasgow is not only unsupported by proof, but is articulately disproved by positive testimony; that the motive ascribed to Glasgow for the fraud alleged—his desire to procure a deed to the land purchased by Spears—had nothing whatever to do with the payments made to the executor, S. H. Lipse, as all these bonds were paid off long before Glasgow sought to procure the deed; that the payment of the first bond was not made in Confederate money at all, and that it was made on the urgent solicitation of the executor; that the payment of the last bond—due October 31, 1862—was not urged on the executor by Glasgow by any word or act; that when the executor raised some objection to receiving payment, Glasgow withdrew, never renewed his effort, and only paid when, several weeks thereafter, the executor called on him to collect the bond; that no single allegation of the bill, which is denied by the answer, is supported by even a single witness; that the duress alleged in the bill is without the shadow of foundation; that allegations in regard to "unavailing efforts to collect the check" are false, and that the single ground of relief left to the plaintiff is that one of the payments made for the Lipse land was made by a check on a bank which at the time dealt chiefly in Confederate money.

The defendant Glasgow answered both the bill and cross-bill, denying in the most explicit and positive manner, every charge of wrong-doing on his part.

The issues thus made imposed on the plaintiffs, according to every rule of equity practice and evidence, the burden of clear and overwhelming proof. Unless they should prove their injurious charges, by the testimony of two credible witnesses, or by that of one witness and corroborating evidence, their case must fail.

And yet we see that the only competent witness produced to sustain these charges, or any one of them, was Catharine Mc-

Cluer—a dependant of the Lipse family—called on to testify as to occurrences which had happened more than eighteen years before. Her deposition will be found on pp. 65–69 of the printed record. She says that she was living at the house of Samuel Lipse in 1862—though she thought the occurrence "was in October, 1863"—when W. A. Glasgow came there and "said he came to pay the balance on the land purchased by Mr. Spears of Moses Lipse's estate; he fetched Confederate money there and counted it out on the candle-stand. It looked like a right large bundle. Samuel H. Lipse would not take it. He said he would not take it; that it was no account. Mr. Glasgow asked if he would give him a check on the Fincastle Bank if he would take it. He said he would take the check; does not think Glasgow gave any check then or there."

The evidence of Glasgow, per contra, has been given above. He says he does not remember that Lipse made an objection to receiving the currency, though he did express some unwillingness to collect the bond, and said he desired to see some persons before doing so, and thinks something was said about the danger of keeping so much money by him in the house; was sure "he suggested that he preferred to have the money in bank." "He may have raised some question about the goodness of the currency; if he did I do not remember, but I do remember that he told me he would come in a few days to see me about it. On the 23d October, 1862, he called to see me at my office in Fincastle, and told me he was ready to receive payment of the balance on the land. I gave him a check on the Farmers' Bank of Fincastle, not more than fifty steps distant, which he accepted without objection. He claimed nothing more than the principal, stating that I ought not to pay interest, as I was ready to pay when it was due, and it was no difference to him."

Upon this evidence, how is it possible to hold that Mr. Glasgow was guilty of any wrong, or even impropriety, in this transaction? Was he not discharging a simple and manifest legal duty? He had, as executor of Spears, collected from ante-bellum resources the money to pay this debt. He had

not, by speculation, realized any profits or supposed profits from the depreciation of Confederate money. All he had in hand was from gold values, transmuted without increase into the currency which then represented nearly all the existing values of the country.

He was paying, and Lipse executor was receiving what every other person in the country was then paying and receiving—a currency, which, though then depreciated, was still the recognized medium of all money transactions. Glasgow did what he was clearly bound to do; nothing more, nothing less. In doing this duty, he used no fraud, no appeal or threat, to force the money on Lipse. Lipse was absolutely free to take the payment or to refuse it. Glasgow did not even advise him to receive it. He did not tell him, as he might truthfully have told him, "everybody is receiving Confederate money for old debts and you ought to do the same." On the contrary, he tendered the money—the only kind he had—in payment of the debt when due, and when Lipse hesitated about receiving it, knowing that Confederate money was not a legal tender, he desisted from the effort at payment. Lipse, after deliberation, and doubtless after consultation with those who were interested or to whom he looked for advice, sought Glasgow at his own office and willingly received payment of the bond, which he receipted and delivered up. Lipse at once proceeded to distribute this money among the legatees of Moses Lipse. Eight out of twelve, and five out of six, representing a ninth share, promptly came forward and received their shares in full. Samuel Lipse, as executor, charged himself with the shares of the absentees; settled his executorial accounts and the same were placed on record, after being formally stated by a Commissioner of Accounts and approved by the Court. It is true that the non-resident executor and legatees were not parties to this settlement; nor for that matter, were the resident legatees, nor were they required to be parties. It was an *ex-parte* settlement only; but, by the law quoted above, it was made binding on every one interested, unless impeached by surcharge or falsification. That settlement has never been assailed. After

the war was over, all parties—non-resident and resident—had and exercised the opportunity to examine this *ex-parte* settlement. For fourteen years and more they acquiesced in this settlement without objection, and then they instituted this suit, in which said settlement is in no wise attacked—not even alluded to—nor did they institute this proceeding till after the death of Samuel Lipse, the executor to whom his brother and co-executor had committed the sole management of the estate. We are therefore compelled to defend ourselves without the aid of the testimony of the principal actor, and, not only so, but, by the ruling of the Court in this case, without the testimoney of Mr. Glasgow wherever he refers to any transaction between him and this dead executor. This case, therefore, presents a stale claim, one which a Court of equity should refuse to touch, because opportunity of a fair investigation and just decision has perished through the laches of those who bring it into this forum.

These views have the greater force when we consider the nature of this suit. It is a suit for SPECIFIC PERFORMANCE of the contract of 10th September, 1860. There can be no question that this is so, though the Court speaks of it as if it were a suit to enforce a lien. There was no lien to execute, and the suit is simply for specific performance, charging that the pretended execution of the contract was obtained by fraud on one who acted under duress, and was null and void. In such cases, says Story, if the "plaintiff has been guilty of gross laches, or if he applies for relief after long lapse of time, unexplained by equitable circumstances, his bill will be dismissed."

THE DECREE AND OPINION OF THE COURT.

This case was not decided by the Circuit Judge, but by his honor, the District Judge, holding the Circuit Court. He required his opinion to be made a part of the decree, and we now ask special attention to these documents. The decree is on pp. 61–65 and the opinion on pp. 119–123 of the printed record. In these the Court held that the two bonds given for the Lipse land, due on the 3d of October, 1861 and 1862,

respectively, had been "paid in Confederate money or in checks on a bank which then paid out Confederate money; that under the circumstances the executor, Samuel Lipse, had no authority to receive anything in payment but specie or other legal money of the United States; that the deed conveying the land from Samuel Lipse, executor, was null and void, and that D. H. Lipse, surviving executor of Moses Lipse, dec'd, should recover of W. A. Glasgow, executor of Spears, the sum of $9,905.33, with interest from the maturity of said bonds, and costs; "and unless said Glasgow, executor, or some one for him, shall pay to said D. H. Lipse, executor, &c., or his attorneys, said debt, interest and costs within ninety days from that day, then L. C. Hansbrough, a special commissioner for that purpose, should sell the tract of land at auction," on terms stated in the decree, and said decree then made the following most curious provision.

"The said Commissioner shall hold the proceeds for distribution *among the parties according to their rights, as may hereafter, at the election of said Glasgow, be ascertained by reference to a Master, as to the voluntary receipt of legacies from Samuel Lipse, one of the said executors.* While this reservation is made for defendant Glasgow, executor of C. C. Spears, deceased, so that he may not pe prejudiced *in any claim he may be advised to assert against such of the parties as may have voluntarily received their legacies in this depreciated currency, he cannot now, or at any future time, be entitled to any credit on the payments claimed by him to have been made by him to the said Samuel Lipse in his lifetime, which have already been disallowed by this Court as payments on the bonds for the deferred payments on the said land.*"

We submit that this decree cannot be defended on any possible ground. Indeed it must shock every sense of justice that a defendant should be required to pay down this whole debt in cash, this cash to be held subject to any claim he might be "advised to assert against such of the parties as may have voluntarily received their legacies in this depreciated currency." And this, when all these parties were before the Court in the attitude of active claimants, and when, too, this matter of voluntarily receiving their legacies had been a matter of articulate defense by pleading and proofs! It had thus appeared that eight shares out of twelve, and five-sixths of another share, had been paid in full, and that the Virginian executor had charged

himself of record with the whole estate! These shares had been received and enjoyed more than twenty years before this decree. And yet here the debtor is required to pay back the whole amount, with the poor reservation in his behalf of an election to assert a remedy, if remedy he had, to recover it back again. What mockery!

The opinion of the Court lays down the law on which it bases its decree thus:

"But it is urged that this lien has been extinguished by Glasgow's pay't to Samuel Lipse. I have heretofore announced the general principle that a fiduciary, whether executor, trustee or agent, cannot take *worthless currency* in pay't of a specie debt, unless he be prepared to justify it by extraneous circumstances; that giving a credit therefor amounts in an executor to a devastavit on his part, and a debtor *unfairly imposing* such pay't upon him shall be liable therefor."

To this we reply: 1st, that if a legatee voluntarily receive the "worthless currency" from the executor who has taken it in discharge of a specie debt, that is an "extraneous circumstance" which will justify the executor. 2d, that in this record there is not one scintilla of evidence tending to show that Glasgow, the debtor-executor, "unfairly imposed such payment upon" Lipse, executor. 3d, that the currency here paid and received was not worthless, but was the medium of payment generally received at those periods by the whole community.

And how does the Court apply the general principle above announced to the facts of this case? Let us see:

"I readily concede it was a venial zeal on his part for his deceased friend, Spear, to propose once the liquidation of his debt in Conf'd. money but when that was once refused, as it is clearly proven in this case on the express ground that such currency 'was of no value,' it ceased to be a virtue or even excusable when renewed, and a check upon the Fincastle Bank was tendered and received in lieu of Conf'd. money. The Court is bound to take notice judicially of the fact that in 1862 the banks traded only in Conf'd. currency, and that a check upon them was generally payable in that currency. Hence, there was no substantial difference between the Bank check and Conf'd. notes as a medium of pay't. The testimony in this case, by the receiver of these checks, demonstrtes the fact if, indeed, any corroboration is needed.

"It is very manifest, Mr. Glasgow saw in this transaction a profitable speculation for his deceased friend's estate. It would have been a handsome thing to acquire $10,000 dollars worth of Botetourt land for about $2,000 in a depre-

ciating currency; but to accomplish this, he must abide the responsibilities cast upon him by the proofs of his activity in pressing his pay't and the state of terrorism and denunciation against those refusing this currency. He, doubtless, has failed in this speculation."

The Court admits that it was "venial" in Glasgow, as executor of Spears, to tender payment "once" to Lipse, executor, but that when such payment was "once refused" it ceased to be a virtue, or even excusable when renewed. To this we reply by challenging any one to produce one word of testimony from this record tending to prove that Glasgow ever renewed the effort. The "renewal" came from Lipse, executor. He had reflected over the matter, and had doubtless consulted with Huff, Craft, Custar, Daniel Lipse, John Lipse, Brownlee, Boreing, and the five children of Joseph Lipse, deceased, and concluded that he would collect the bond from Glasgow, and accordingly he sought Glasgow for that purpose, and so the bond was paid. Read the testimony of Catherine McCluer—the only witness for these plaintiffs on this point, and see what a contrast its statements present to the facts as here stated by the Court.

But what does the Court say about the payment of the bond which matured 30th October, 1861? Not one word. It ignores that transaction, or rather brings it under its condemnation, without one particle of evidence; nay, in the teeth of the evidence showing that said payment was not made in Confederate money at all; was not made on the solicitation of Glasgow, but by him, on the repeated demands of Lipse, executor. Is it possible that what occurred in October, 1862, can relate back and affect the transaction of 1861? Is this not another case of the wolf and lamb drinking at the stream? And yet the Court says both bonds must be paid over again, because it was "not excusable" in October, 1862, to offer to pay in Confederate currency more than once!

And again, what does the Court say about the nine legatees who, in 1861 and again in 1862, applied to Lipse, executor, and received from him, without a word of objection, all their shares of these two payments? By examining the receipts given to

Lipse, executor, by these parties, which are on pages 38–45 of printed record, the Court will see that these disbursements were generally made in a few days after the money had been collected by Samuel H. Lipse, showing that these legatees were on the watch and were eager to get their "worthless currency" as soon as possible, and that Samuel Lipse, executor, after he declined to receive the Confederate money for the bond due in October 1862, must have been urged by these legatees to reconsider his refusal and to collect the bonds in such money as he could get. And yet all the money these people received must be paid over again! Again we ask, is equity a mockery of common sense and common justice?

The concluding paragraph quoted just above, from the opinion of the Court, is a most unjustifiable insinuation against Mr. Glasgow, who has not in this matter engaged in any speculation for himself or for the estate of Spears. He has done what the laws of the land and his oath imposed on him as a plain duty. He has done what every honest man would have done under the same circumstances.

Nor was the Confederate currency depreciated in October, 1862, as the Court here says it was. It was then worth full twice as much as is intimated. Why this exageration?

And what did Glasgow have to do with "the state of terrorism and denunciation against those refusing this currency?" When Lipse, executor, refused to receive it from him, did he denounce him or seek to bring any terrorism to bear on him? Not at all. The truth is, there was no "terrorism" against any man who refused to receive Confederate money. The only proof on this head in this record is the deposition of Joel G. Custer, pages 73–75, all whose statements are clearly and positively disproved by the testimony of sensible and honorable men. This deposition, so far as it relates what took place when he collected the check of S. H. Lipse, executor, should have been excluded as evidence. It was clearly inadmissible as it related matters "*inter alios acta*," and no effort whatever was made to connect Glasgow with what occurred. Besides, this witness is inaccurate in all his statements of facts, and in-

deed it is doubtful whether he ever had any such transaction as he relates, since among the receipts given by Custer, and wife, and which are copied in this record, there is nothing showing that the redoubtable Joel ever had any connection with any of the payments made to his father and mother. See their receipts on page 40 of printed record.

We again make the point that this deposition was not admissible as evidence in this case and the Court below erred in not excluding it.

WERE THE PAYMENTS TO S. H. LIPSE, EXECUTOR, VALID?

This is the chief question in the case. If the payment of the two bonds which matured 3d of October, 1861 and 1862, discharged those bonds, then the question whether the deed from S. H. Lipse, executor, was a sufficient conveyance or not, is wholly immaterial. If these bonds have been legally discharged, this suit falls to the ground. The position taken by the bill—the case there made against the validity of these payments—has been overwhelmingly disproved by the testimony even of the plaintiffs below. The fraud and duress charged in the bill have been shown to exist only in the disordered imagination of these litigants. They are, therefore, shut up to maintain that *no ante-bellum obligation could have been discharged to an executor by a payment in Confederate money, however fairly and honestly the payment may have been made.*

The testimony in this case shows that, until some time in 1862, Confederate money was not in general circulation in Botetourt county, which, it should be observed, is an inland, mountain portion of the State; and that after it became the current money of the State, all persons received it without question in all their transactions during the year 1862. Very soon after its introduction it became the only money in circulation. For a considerable time it answered all the needs of trade; it paid old debts, and its purchasing value was equal to that of any ante-bellum currency. It was, for instance, a long time before real estate responded to the inflation of the currency, and, as a general rule, Confederate currency during 1862 was efficient as a

medium of exchange, except for such articles as were needed for the use of the army, and this state of things continued for a longer period in counties which were remote from the centres of military operations. The people regarded and treated this money not only as real money, but as the only money to be had.* Chief Justice Chase, speaking for all the members of this Court in 1868, said:

"The Confederate notes were issued early in the war, and these notes in a short time became almost exclusively the currency of the insurgent States. As contracts in themselves, except in the contingency of successful revolution, these notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were payable only 'after the ratification of a treaty of peace between the Confedrate States and the United States of America.' While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency imposed on the community by irresistible force." * * * *

"But it must be remembered that the whole condition of things in the insurgent States was *matter of fact, rather than matter of law,* and, as matter of fact, these notes, payable at a future and contingent day, which has not arrived and can never arrive, were forced into circulation *as dollars,* if not directly by the legislation, yet indirectly and quite as effectually by the acts of the insurgent government. Considered in themselves, and in the light of subsequent events, these notes had no real value, but they were made current *as dollars* by irresistible force. They were *the only measure of value* which the people had, and their use was a matter of almost absolute necessity."

The doctrine of this case has been again and again approved by this Court. It was the doctrine dictated by common justice. This Court, commenting upon it, has more than once said "it would have been a cruel and oppressive judgment, if all the transactions of the many millions composing the inhabitants of the insurrectionary States for several years of the war had been held tainted with illegality because of the use of this forced currency, when those transactions were not made with reference to the insurrectionary government."

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*Striking illustrations of the variant values of Confederate currency with reference to the value of gold, in different sections of the South, will be found in the report of "The Confederate Note Case." 19 Wall. 148. It will there appear that, at the time Glasgow, ex'or, paid Lipse, ex'or, the last of the Spears notes the depreciation made the Confederate dollar worth fifty cents—in some sections even more than that; so that the depreciation was then less than that of Federal currency during considerable periods of the war.

The transaction then between Glasgow, executor, and Lipse, executor, was not tainted with illegality. It was, in every part and in every sense made in good faith.

But it will be said that while this is and must be the doctrine governing transactions between individuals and which involved their individual rights only, it is not applicable to transactions of fiduciaries, dealing with the rights of others, and certainly not when dealing with the rights in which non-residents of the Confederate States were interested. We admit that, as to these classes of transactions, there is some limitation of this doctrine. Many cases decided here and in our Supreme Court of Appeals show what these limitations are. These cases hold that a fiduciary who, unnecessarily, received payment of *ante bellum* debts, properly secured—that is, when the money thus received could not be used in payment of debts or legacies—is chargeable with a devastavit, and that wherever the debtor, thus paying his specie debt, used improper means to compel or induce the fiduciary to take such currency, then he participated in such devastavit, and may be held primarily liable to make good all the losses incident to the transaction. We have yet to see the case in which this Court, or our own Court of Appeals, has gone beyond this.

Ward v. Smith, 7 Wall. 447, was a case involving a collection *by an agent*. This Court there held that the Bank in which a bond was deposited for collection was only an *agent* for such collection, and as such "had *no authority to receive payment in a depreciated currency*." This is the general principle governing the transactions of all agents to collect money.

Again, in *Fretz v. Stover*, 22 Wall. 198, this Court reiterated the same principle. Chilton, an attorney, had, late in 1864 or early in 1865, collected a bond which was not due at the breaking out of the war, and which remained in his hands. The Court held that Stover, the debtor, had discharged his bond "in paper worthless to Fretz, and with a knowledge that, worthless as it was, it could not be sent to him." * * "It is impossible to escape the conviction that there was col-

lusion between Chilton and Stover in the transaction, but, whether so or not, the transaction itself is invalid," and this on the ground that the *agent and attorney* had no authority to make collection in a depreciated currency.

Horn v. Lockhart, 17 Wall. 570, was decided distinctly on the ground that an executor could not justify an investment of the funds of an estate in Confederate bonds, even though approved by the Probate Court in which he made his settlements. His Honor, Justice Field, in delivering the opinion of a majority of the Court, says, "The bonds of the Confederate States were issued for the avowed purpose of raising funds to prosecute the war, waged by them against the government of the United States. The investment was, therefore, a direct contribution to the resources of the Confederate government, * * and the invalidity of any transaction of that kind, from whatever source originating, ought not to be a debatable matter in the Courts of the United States."

Though not exactly applicable to the point now under discussion, we will quote here an extract from the opinion of Justice Field in this case, bearing on another point in the case at bar, and which states with admirable precision and clearness what legislation of the States in rebellion will and should be recognized by the Courts of the United States:

"The existence of a case of insurrection and war did not loosen the bonds of society or do away with civil government or the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, *estates settled and the transfer and descent of property regulated precisely as in times of peace.*"

In *McBurney* v. *Carson*, 9 Otto. 567. This Court held McBurney was primarily liable for the devastavit of Robertson, an executor, because his firm had contrived and executed a fraud. The Court said "there was evidently a plot, McBurney & Co. were their contrivers, Ball was their instrument, Robertson was their dupe and the Carsons were the victims."

The Court of Appeals of our own State has again and again announced the same doctrines. *Jones' Executor* v. *Clark*,

25 Grat. 642, where all the leading authorities are reviewed; *Tosh* v. *Robertson*, 27 Grat. 270, at pp. 278-9; *Pilson's trustee* v. *Bushong*, 28 Grat. 229; *Crawford* v. *Shover*, 29 Grat. 69; *Mills* v. *Mills' Executors*, 28 Grat., at p. 501; *Staples v. Staples*, 24 Grat. 226.

In *Pinkard* v. *Wood*, 8 Grat. 140; *Cocke* v. *Minor*, 25 Grat. 246; *Patterson* v. *Bondurant*, 30 Grat. 94, and other cases, our Court holds "that it is the settled doctrine of this Court that a debtor who pays the money (greatly depreciated currency for a specie debt) knowing that it was not needed for the payment of debts or legacies, or that the safety of the debt did not require its collection, but that if received, it would be for investment and would involve the executor in a devastavit and breach of trust, will be held to be a participant in the *devastavit* and breach of trust."

But as stated above, there is no case, so far as we are informed, in which this Court has ever held that such a payment by one executor to another executor is necessarily or even *prima facie* either fraudulent or invalid. We have yet to see a case in which any respectable Court has held that a debtor executor could not discharge the debt of his testator to another executor, if the transaction was free from fraud and unfair dealing.

It does not even appear in this record that Glasgow knew the whereabouts of the legatees of Moses Lipse, deceased. It was not his duty to look to the provisions of the Lipse will or to enquire as to the locality of those interested under it. If he had looked to the will he could have formed no indication of the non-residence of any of the legatees. It does not appear that Samuel Lipse intimated that he did not like to receive payment of the last bond, because some of the legatees were non-residents. When the first bond became due, Samuel Lipse had demanded, and on more than one occasion urged, its payment. This would imply that he had full authority to collect, and that he had no difficulty in the way of an immediate distribution.

Samuel H. Lipse, as executor of Moses Lipse, deceased, was not a mere agent. Full and absolute authority was vested in

Brockenbrough v. Turner & Harding's Exr v. same, recently decided by Va. Ct. Appeals 78 Va.

him to manage and close up all the affairs of the estate. So far as D. H. Lipse, his co-executor, could do so, he had invested Samuel H. Lipse with *sole authority* to do this work; for, though he had qualified as executor, he had in a very short time thereafter turned over all the affairs of the estate to the exclusive control and management of his brother and co-executor.

But without this action on the part of D. H. Lipse, his brother, as one of the executors, had plenary authority to collect these land-bonds, and it was not necessary that D. H. Lipse should join in the receipts. This is a proposition so elementary in its character that we do not deem it necessary to say more than to refer to the authorities: 2 Williams Ex'ors, pp. 850–51–52; 1 Lomax Ex'ors, 545; 2 Leading Cases Equity, part 2, p. 301 (notes to *Brice v. Stokes*); *Edmunds v. Crenshaw*, 14 Peters, 166.

If now S. H. Lipse, executor, had authority to collect these bonds; if he collected them without intimating to Glasgow that he could not use the money in payment of debts and legacies; if Glasgow had no reason to suspect that such was the case; if Glasgow, after the bond became due, did not postpone payment till the currency had further depreciated, but paid to the day; if Glasgow used no artifice or fraud to induce Lipse to receive the money, and if Glasgow, as executor of Spears, was discharging a plain and simple duty when he paid these bonds, we claim that no court of equity can justly impose on the estate he represented the duty of paying these bonds over again.

We again call attention to the fact that Samuel H. Lipse, executor, having collected the whole of this estate, and having charged himself with the same, and with the distributive shares of the several legatees, this suit could be maintained only by a proceeding against Samuel H. Lipse, executor, and Glasgow, executor of Spears, to have the account, thus recorded, surchaged and falsified. The proceeding against Glasgow, executor, alone, could not possibly be maintained.

The Court below erred in excluding that portion of Glas-

gow's testimony which related to his transactions with S. H. Lipse. Glasgow's testimony was admissible under Virginia law, provided some solvent person assumed to pay any costs adjudged against him, which, in abundant caution, we offered to do and did in this case, as will be seen from the final decree. But this was not necessary; because our Statute (Code of 1873, ch. 172, § 2, p. 1109), provides that:

"21. No witness shall be incompetent to testify because of interest; and in all actions, suits, or other proceedings of a civil nature, at law or in equity, before any court, or before a justice of the peace, commissioner, or other person having authority by law, or by consent of parties to hear evidence, the parties thereto, and those on whose behalf such action, suit, or proceeding is prosecuted or defended, shall, if otherwise competent to testify, and subject to the rules of evidence and of practice applicable to other witnesses, be competent to give evidence on their own behalf."

The Court below excluded Glasgow's testimony, so far as it related to his transactions with S. H. Lipse, executor, on the ground that the section of the Statute next to the above provided that: "Where one of the original parties to the contract or other transaction which is the subject of investigation is dead, or insane, or incompetent to testify, &c., the other party shall not be admitted to testify in his own favor, or in favor of any party having an interest adverse to the party so incapable of testifying, &c."; thus ignoring an amendment to this provision, passed by the Viaginia Legislature in 1877 (Sess. Acts 1876–78, ch. 256), in the following words: "provided, however, that no witness who would have been competent to testify as the law stood before the passage of this and the preceding section, shall be rendered incompetent hereby"; and ignoring that our Court of Appeals has again and again construed the original act as intended to enlarge and not to restrict the rules regulating the admissibility of testimony. (*Borst v. Nalle*, 28 Grat. 423, at p. 434; *Reynold's Ex'or v. Calloway's Ex'or*, 31 Grat. 436, at p. 440.) Glasgow, executor, though a party to this suit, was competent to testify, so soon as he tendered the bond of F. T. Glasgow assuming to pay all costs adjudged against W. A. Glasgow, executor, it being provided by the Code of Virginia (1873) that "No trustee, executor or other

fiduciary shall be incompetent as a witness in any case by reason only of his being liable to costs; he shall not be competent unless some person undertake to pay the same." It is, therefore, clear that this testimony was improperly excluded. The portions excluded by the Court below will be found on pp. 157–8–9 of the printed record.

This suit should have been dismissed on the ground that the wrongs complained of by the principal plaintiff, D. H. Lipse, were the wrongs of S. H. Lipse, executor, who, with D. H. Lipse, executor, had executed a joint executorial bond, (see Rec. p. 45), by which act D. H. Lipse became a surety for S. H. Lipse, executor. D. H. Lipse, therefore, in this suit, stands in the position of seeking a relief from a wrongdoing for which he himself is liable. *Morrow v. Peyton*, 8 Leigh, 54; *Littledate v. Robinson*, 2 Brockenbrough, 159; *Lomax's Executors*, 333, § 24.

It was grossest error in the Court below to decree the repayment by Spears' executor of the eight and five-sixths shares which S. H. Lipse, executor, had paid in full, and for which he filed receipts in full with his final settlements. In *Horn v. Lockhart*, *supra*, this Court used the following significant language: "Had the legatees of the testator voluntarily received the bonds in discharge of their respective legacies, the case would have presented a very different aspect to us. The case might have been treated as closed and settled, but such is not the fact." If this be true in a transaction involving a payment in Confederate States bonds, which bonds the United States Courts have consistently refused to recognize as the basis of any legitimate transaction, it is, *a fortiori*, true in regard to payments in Confederate currency, which this Court has said it would be "cruel and unjust in the highest degree" not to recognize as such a basis.

The Court erred, as before stated, in giving a decree for the share of Christopher Lipse. These heirs, it will be seen, were never made parties to this suit. They evidently refused to join in its demands. Their names will be found in D. H. Lipse's deposition, p. 94, Ques. and Ans. 23.

We again repeat that there is not testimony in the record nor any principle of law or equity, which justified the Court in requiring Spears' estate to repay the bond which became due on the 3d day of October, 1861. The ground on which the Court below bases its decree have no reference to that transaction whatever.

Again, too, we insist that the long continued laches of the plaintiffs in bringing this suit, their waiting till all the principal witnesses—S. H. Lipse, the executor, Jno. T. Anderson, his legal adviser, Jas. T. Logan, the commissioner of accounts, and others—had died, rendered it inequitable for the Court to entertain this suit.

And finally, the Court should have dismissed this suit for want of jurisdiction. The bill describes the plaintiffs as "*non-residents of the State of Virginia*" and the defendants as "*residents*" of that State. It is "*citizenship*," not "*residence*," that determines the matter of jurisdiction. The bill should have set forth the citizenship of all the parties to the suit. Failing to do this, and their respective citizenships not being proved by the testimony, the Court had no jurisdiction of the cause.

Respectfully submitted,

T. J. KIRKPATRICK,

For Appellant.

117-327

SUPREME COURT OF THE UNITED STATES.

October Term, 1884.

No. 275.

WILLIAM A. GLASGOW, EXECUTOR OF CHARLES C. SPEARS, DECEASED, - - *Appellant*,

against

DAVID H. LIPSE, IN HIS OWN RIGHT, AND AS EXECUTOR OF MOSES LIPSE, DECEASED AND OTHERS, - - - - - *Appellees*.

ON APPEAL FROM A DECREE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA, HELD IN THE CITY OF LYNCHBURG.

Brief of Wm. J. Robertson, of Counsel for Appellant.

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STATEMENT OF THE CASE.

On the 25th day of January, 1879, David H. Lipse as the surviving executor of Moses Lipse, deceased, and in his own right as one of the legatees under the will of said Moses Lipse, and certain other parties (twenty-four in number, including the husbands of the married women) claiming as legatees under the said will, filed their bill as plaintiffs in the Circuit Court of the United States for the Western District of Virginia, held in the City of Lynchburg, against certain named defendants (fifty-four in number, including the husbands of the married women) stated in said bill to be also legatees un-

der the will of said Moses Lipse, and also against William A. Glasgow, executor of Charles C. Spears, deceased, (who is the appellant herein) and other named parties (seven in number) as defendants.

The bill avers that the complainants therein "are all *residents* of the United States, but are *non-residents* of Virginia;" and that all the defendants thereto "are *residents* of the Western district of the State of Virginia," with the exception of four of them, who are averred to be "*residents* of West Virginia." In other portions of the bill the bill the *residence*, or *non-residence* of parties is stated, and a few (some three or four) of them are spoken of as being "*of*" certain named States. And there is an averment that "during the continuance of the rebellion, whilst the complainants were loyal citizens of the United States (as in point of fact they always have been)" certain things of which they complain were done in Virginia. But the only statement in the bill, or in any of the pleadings in the case, as to the *State citizenship* of any one of the parties, plaintiff or defendant, is that David H. Lipse, one of the plaintiffs, was at the time of the admission of the will of his testator, Moses Lipse, to probate, and also at the time of filing said bill, *a citizen of the State of Indiana.*

The object of the suit was to set aside a deed which had been executed on the 7th day of April, 1863, by Samuel Lipse as executor of said Moses Lipse, dec'd, conveying to the defendant Glasgow, as executor of C. C. Spears, dec'd, a tract of land in Botetourt county. Va., which had, as evidenced by a contract in writing, been purchased by said Spears on the 10th day of September, 1860, from the said Samuel Lipse and the said David H. Lipse, as executors of the said Moses Lipse, deceased, at the price of $14,858.00; and to enforce the payment of two-thirds of said amount, which it was averred in the bill had never been paid, by charging the same as a lien upon said land, then in the possession of the defendant, Madison McCullock, who claimed to be the owner thereof, under and by virtue of conveyances executed by the said Glasgow as executor of said Spears, to the defendant William A. McCue, by said McCue to the defendants, Joseph F. Robinson and said McCullock, jointly, and by said Robinson to said McCullock.

It was charged in the bill that said Glasgow, as the executor of said Spears, did, in the months of March and April, 1863, contrive and execute a plan to obtain a deed of conveyance of said land to him as such executor without having first fairly paid off the just claim of the estate of Moses Lipse, dec'd, for the second and third instalments of the purchase money, which amounted at that time to $9,905.33, with lawful interest thereon from the 3d of October, 1860. That, knowing that the executors of Moses Lipse could not properly receive anything except gold coin, or its equivalent, and that, according to the laws in force and prevailing in Virginia at the time of the sale, no valid conveyance of the land could be made by one only of the executors; yet that, fortified with an act passed on the 5th of March, 1863, by the Legislature, then assembled at Richmond, Va., providing that it should be lawful for a fiduciary residing in Virginia to exercise solely and with the same effect as if it were executed by both, any power which had been conferred on him jointly with a fiduciary residing within the limits of the United States; and armed with all the Confederate enactments ~~of~~ for sequestrating the property of alien enemies; and loaded with Confederate States treasury notes, he sought Samuel Lipse, the resident executor of Moses Lipse, and insisted that he should receive said Confederate money in payment of said unpaid instalments of purchase money.

The bill further alleges that in vain Samuel Lipse refused to receive such currency, claiming that the debt was payable in lawful money of the United States, and that he could receive none other; that his co-executor, David H. Lipse, and half of his legatees were residents of the United States, and could not and would not receive such currency; that neither he nor the resident legatees were willing to receive it, and that even if he should receive it, he *alone* could make no valid conveyance, and his co-executor must necessarily join in the deed to make it valid. That all of these objections availed nothing to defeat the purpose of Spear's executor, who, representing to the executor that the act of 5th March, 1863, had been passed *to meet the case*, that he was not only authorized but compellable to make the conveyance, and that he

"Environed the resident executor with a net of circumstances which were designed, and were sufficient, to control that perfect freedom of will and action which the resident executor was entitled to exercise in the matter; and which net of circumstances was tantamount, if not to technical, at least to moral duress."

That, "at length under such compulsion," the resident executor

"Did receive a check drawn by Spears' executor on the Bank of Fincastle, in Botetourt county, for the amount of the unpaid instalments of the purchase money; which check, however, was never paid by the said bank, though due diligence was used to present the same and demand payment of the sum of money for which it was drawn; the said bank refusing to pay the same except in said Confederate currency."

The bill further alleges that none of the complainants ever received, or accepted, at said bank or elsewhere said check or any part thereof; and that, as they were informed, neither the resident executor nor any of the resident legatees, ever received, of their own free will, the sum of money specified in said check; but that if they, or any one of them, did receive the same or any part thereof in Confederate currency, "the said currency was forced upon them by the compulsion of circumstances wherewith they were surrounded by the conduct of Spears' executor or his agents."

The bill prayed that the defendants should be required to answer each and all of the allegations therein contained, that a decree should be rendered ordering Glasgow as executor of Spears to pay to David H. Lipse as surviving executor of Moses Lipse, *de bonis testatoris*, the sum of $9,905.33 with interest thereon from the 3d of October, 1860—and that in default of such payment said land should be sold to satisfy said unpaid purchase money.

The parties defendant to this bill, who were named as legatees of the said Moses Lipse, filed their joint answer admitting its allegations and uniting in the prayer thereof; and by the leave of the court filed also a cross bill against said Glasgow as executor of C. C. Spears, —— Lewis and his wife who was the widow, and Sally Moore Spears who was the daughter of said C. C. Spears, the said Madison McCullock, the said Wm. A. McCue and Robert K. Godwin—in which they reiterated the allegations of the original bill, and of their answer thereto, averring also that said Glasgow,

"Availing himself of his position as a lawyer of learning and experience, and ample acquaintance with the resident executor Samuel Lipse, advised him

that he had the power and that it was his lawful duty to receive Confederate States Treasury notes as and for payment of said bonds, and to convey the said land to him the said Glasgow as executor of C. C. Spears, dec'd; and by such advice, and by persuasion, inveiglement, threats, coercion and duress did actually prevail on the said resident executor to deliver up to him the said Glasgow the said bonds; and to receive therefor a check on the bank of Fincastle, dated about April, 1863, for the amount of said bonds, under the impression also induced by the representations of said Glasgow, that the said check would be paid in such money as the said resident executor had been accustomed to receive at the said bank before the war;"

and averring further that none of the legatees ever received any part of said two instalments of the purchase money for the land in legal tender money, and never voluntarily received anything else in payment thereof, and that

"Any acceptance by them of any Confederate currency as such payment or satisfaction, was under duress of fear and force, and under the compulsion of the circumstances brought to bear upon them by the said executor of Spears and his agents as aforesaid."

The cross bill prayed that the defendants thereto should be required to answer all and singular its averments on their corporal oaths.

The said Glasgow as executor of Spears, filed his answer to the original bill, and also to the cross bill, denying in the most emphatic manner the allegations of each of said bills so far as they related to him or affected the interest of the estate of C. C. Spears represented by him as executor. Much testimony was taken, but said allegations are not only unsustained by proof; but on the contrary, it clearly appears from the proofs in the cause, as well as from said answers, that they are wholly unfounded in fact.

So far from its being true that the defendant, Glasgow, at the time, in the manner, or under the circumstances alleged in the bill, induced the resident executor, Samuel Lipse, to accept his check on the bank of Fincastle for the deferred instalments of the purchase money of the land, amounting to $9905.33, with interest thereon from the 3d of October, 1860, it is shown that said instalments did not bear interest from the 3d October, 1860, but from the dates when they became due and payable; and that they were not paid at one and the same time, but at different times, and soon after they respectively fell due.

The first instalment, amounting to $4952.66⅔, fell due on the 3d of October, 1861. Of this amount, Glasgow as the

agent of Spears, who was then living (he was killed in battle on the 2d of September, 1862) paid $3000 to the resident executor, Samuel Lipse, on the 4th November, 1861. It is more than probable that the whole of this amount was paid in Virginia Bank Notes—but few Confederate treasury notes having then come into circulation in that part of the country. The balance of said instalment, amounting with interest thereon to $1990.73, was paid to Samuel Lipse by Glasgow as agent for Spears, on the 1st day of March, 1862.

About the time that said instalment became due, Samuel Lipse called to see Glasgow to inquire whether Spears, who was then sick at Glasgow's house, would be able to meet the payment, and was informed by Glasgow that he had, as Spears' agent, been making preparations to do so, but doubted whether he would be able to make the entire payment; and expressed a hope that he (Lipse) would give a little indulgence: saying that if he would call again in a short time he would pay him, for Spears, all that could be raised. Samuel Lipse did call on the 4th of November, when he received the $3000—and he called again on the 1st day of March, 1862, when he received the balance, $1990.73—declining to charge interest on the $3000 from the 3d day of October to the 4th of November, 1861, saying he accepted that payment as if made when the bond fell due. (See Record, pages 113 and 157; pages 32 to 45; and pages 78 and 82.)

On or about the 3d October, 1862, when the second and last instalment became due, Glasgow, who had then qualified as the executor of Spears, called at the house of Samuel Lipse, taking Confederate money with him, and offered to make the payment—Lipse declined to receive it at the time—saying, according to the testimony of Miss McClure, page 66 of the Record, "that it was no account," but expressing his willingness to take a check for the amount. According to the testimony of Glasgow (pages 114 and 158 of the Record) saying something about the danger of keeping so much money by him in his house—expressing a preference to have it in bank—stating his desire to see some parties before he closed it up—and (probably) raising some question as to the goodness of the currency—but promising to come in a few days to see Glasgow

about receiving payment. He did accordingly, on the 23d of October, 1862, call at the office of Glasgow (some eight miles distant from the residence of said Samuel Lipse) and told him he had consulted with counsel and was ready to receive payment for the balance on the land. Glasgow then gave him a check on the Farmers' Bank of Fincastle for the amount, which he accepted without objection—Glasgow saying to him at the time that he would look into the matter of the deed, being inclined to think that he and his brother (David H. Lipse) ought both to unite in the conveyance.

Some months afterwards, Glasgow having sold the farm to McCue, had his attention called to the Act of 5th March, 1863, with the passage of which he had nothing to do, and informed Samuel Lipse that it applied to the case, and that under it he was authorized to make the conveyance without the concurrence of David H. Lipse, the non-resident executor—of his power to do which Glasgow had expressed a doubt at the time the payment was made. Samuel Lipse executed the deed, without objection, having, when the last payment was made, expressed his readiness to do so at any time that Glasgow might desire it.

In this whole matter Samuel Lipse acted freely and deliberately, having consulted with his counsel, and no doubt with most of the legatees. Glasgow made no misrepresentation—attempted no intimidation—nor did he even use any effort to persuade him to take the money or the check. He was not particularly acquainted with Samuel Lipse—nor did any of them repose special confidence in him. In receiving Confederate currency in payment of an ante-war debt, Samuel Lipse did only what was at that time usual among business men in that part of the country—Confederate currency not having then very greatly depreciated, and being the only money in circulation.

See pages 78, 82, 113 to 119 and 157 to 159 of the Record, and the answers of Glasgow to the Original and Cross Bill.

Samuel Lipse paid over to those of the legatees who were accessible their respective shares of the amounts received by him soon after they came into his hands, as is shown by the settlement of his executorial accounts and the receipts filed there-

with, filed as an exhibit with the answer of Glasgow, and extending from page 32 to page 45 of the Record. From which it will be seen that the shares of eight of the twelve legatees were paid in full—and five-sixths of the share of one other of them—leaving undistributed by him three and one-sixth only of the twelve original shares. Two and one-sixth of these undistributed shares were confiscated by the Confederate government and paid over by Samuel Lipse to Steel, the Receiver, on the 30th of March, 1864, as is shown by his receipt on page 44 of the Record. The other share seems to have remained in the hands of the executor.

An attempt was made by the plaintiffs to prove by Joel G. Custer and Levi Huff that some of the legatees objected to receiving Confederate money from the bank on the checks given them by the executor, but were compelled to do so by intimidation and threats on the part of the bank officers and others. It is not attempted to be shown that Glasgow had any part in thus compelling its receipt, or that he was privy to the alleged threats or intimidation—indeed, Huff admits that he thinks if Glasgow had heard of it, he would have reproved the parties making them. The testimony of these witnesses is entitled to no weight, being directly contradicted by credible disinterested witnesses, and by the dates of the receipts given by the legatees to the collection of whose shares they referred.

Even if this were otherwise, the validity of the payments previously made by Glasgow to Samuel Lipse, and voluntarily accepted by him, would not be affected by the threats and intimidation alleged to have been used.

The executor, David H. Lipse, returned to his home in Indiana about the time that the sale of the land was made in the year 1860, leaving it to his co-executor, Samuel Lipse, to collect and distribute the purchase money for the land, as well as the other assets of the estate, which Samuel proceeded to do—settling his accounts in the name of his co-executor as well as himself--the commission to which they were entitled being credited to them jointly—as appears from the recorded settlement, pages 32 and 35 of the record.

David H. Lipse did not return to Virginia until February, 1874, when he obtained from his co-executor, Samuel Lipse,

full information of all that had been done by him, as executor; and consulted counsel as to the expediency of bringing suit for his share of the estate which had been confiscated. He was advised that if he succeeded in establishing his claim the loss would fall on his brother Samuel—who, if any one, would be responsible to the legatees for the receipt of the Confederate money—and he determined not to sue.

After the death of Samuel Lipse, and nearly five years after the visit of David H. Lipse to Virginia, this suit was brought—some of the resident legatees having threatened to hold the executors responsible if they did not sue to recover, from Spears' estate, the payments that had been made in Confederate money.

See deposition of David H. Lipse, page 88 to 97 of the Record.

It is worthy of note that no claim is made in the bill for any relief against the estate of Samuel Lipse, and in the answer of the resident heirs it is expressly denied that his estate can, in any event, be made liable.

When the cause came on to be heard, the Court excluded so much of the deposition of Glasgow as gave an account of what had passed between himself and Samuel Lipse, on the ground that he was incompetent to testify as to such matters, the said Samuel being dead. The portions so excluded have been omitted by the clerk of the Circuit Court in the copy of the deposition, extending from page 112 to 119; but are copied by him on pages 157 to 159 of the record—with references to the portions of the deposition in which they appeared—so that it is necessary, in order to understand the deposition as it was given, to read from pages 157 to 159, the extracts there given in connection with the paragraphs from which they were taken.

Upon the facts as above stated, and others not necessary to be adverted to on the consideration of this appeal, the cause came on to be heard at April term, 1882, and the decree complained of, which will be found extending from page 61 to 65 of the record, was rendered by the Court. This decree brings the cause on to be heard upon the bills and answers, without showing that replications had been filed to the answers. It appears, however, from the record, page 56, that general replications

were filed to the answers, *to the cross bill*—but it nowhere appears that any replication was ever filed to Glasgow's answer to the original bill.

By said decree all of the deeds which had been executed conveying the said land to Glasgow as the executor of Spears, and to those claiming under him, were set aside and annulled; and it was ordered that unless within ninety days from the date of said decree, Glasgow, as the executor of C. C. Spears, should, *de bonis testatoris*, or some one for him, pay to David H. Lipse, as surviving executor of Moses Lipse, deceased, or to his attorneys, G. W. Hansborough and R. F. Mays, the costs of suit and the sum of $9,905.33, with interest at the rate of 6 per cent. per annum on $4,952.66, part thereof, from the 3d day of October, 1861. and on the residue thereof from the 3d day of October, 1862, until paid, the said lands should be sold by L. C. Hansborough, thereby appointed a special commissioner for the purpose, after advertisement, and upon the terms, as to credit, &c., therein specified: and should hold the proceeds for distribution among the parties according to their rights as might thereafter, at the election of said Glasgow, be ascertained by reference to a Master as to the voluntary receipt of legacies from Samuel Lipse, one of the executors. But declaring that,

"While this reservation is made for the defendant Glasgow, executor of C. C. Spears, deceased, so that he may not be prejudiced in any claim he may be advised to assert against such of the parties as may have voluntarily received their legacies in a depreciated currency, he cannot now, or at any future time, be entitled to any credit on the payments claimed by him to have been, on by him to the said Samuel Lipse in his lifetime which have already been disallowed by this Court as payments on the bonds for the deferred payments on the said land."

SPECIFICATION OF ERRORS.

The appellant assigns as error this action of the Circuit Court, and respectfully insists,

I. That the said court ought not to have taken jurisdiction of the case, it not appearing from the record that the controversy was one "between citizens of different States."

See, *Brown* v. *Keene*, 8 Peters 112,
Robertson v. *Cease*, 97 U. S. 646,
Grace v. *The American Insurance Co.*, 109 U. S. 278,
M. C. & L. M. R'y Co. v. *Swan*, 111 U. S. 379.

II. The case being heard without replication to the answer of Glasgow to the original bill, all the statements in said answer should have been taken as true, and the bill dismissed.

III. It was erroneous in the court to exclude the portions of the deposition of Glasgow which will be found on pages 157, 158 and 159 of the Record.

See *Monongahela Nat. Bk. v. Jacobus*, 109 U. S. 275 as an authority to show that he was competent to testify as to these matters under Section 858 of the Revised Statutes of the United States.

He was competent to testify as to them also under the Virginia Statutes.

The Act of 2d of April, 1877, (Acts 1876–77, ch. 256, page 266), expressly providing that, "no witness who would have been competent to testify as the law stood before the passage of this and the preceding section shall be rendered incompetent thereby"—said provision being in affirmance of the construction which had been previously placed upon the original act by the Virginia Court of Appeals.

The Code of Virginia, Chapter 172, Section 19, page 1109, provides that,

> "No trustee, executor or other fiduciary shall be incompetent as a witness in any case by reason only of his being a party thereto, or of his being liable to costs in respect thereof: but if liable to costs, he shall not be competent unless some person undertake to pay the same."

This act was in force before the passage of the law, which as the Circuit court held, rendered Glasgow incompetent to testify as to the transactions between him and Samuel Lipse.

Now it is plain that in this case Glasgow was not "*liable to costs*;" which, under the prayer of the bill, and as was held by the court, were payable *de bonis testatoris* only, so that by the express terms of the law, he was a competent witness as to all matters, and it was wholly unnecessary to tender the undertaking for costs, which, although admitted to be "solvent and sufficient," the court refused to accept.

IV. It was erroneous of the court not to dismiss the suit because of the laches of the plaintiffs in both the original and the cross bills.

The plaintiffs in the original bill, if they had not before, certainly had full information of all the facts upon which their rights depend, early in 1874, when David H. Lipse came to Virginia and inquired into the matter. They might have obtained such information by the exercise of reasonable diligence, soon after the close of the war in 1865. Yet their suit was not brought until 1879, fourteen years after information might have been obtained, and five years after full information was certainly obtained by David H. Lipse on his visit to Virginia, and *after the death of Samuel Lipse.* If the suit had been brought in his life time there is every reason to believe that his evidence would have sustained the statements made by Glasgow, and shown that there was no ground whatsoever for holding the estate of Spears liable to the executors or legatees of Moses Lipse, deceased.

The laches of the resident legatees who made themselves plaintiffs in the cross bill, was still greater. They had knowledge of the facts at the time they occurred, yet slept upon their rights, if any they had, from that time until 1879—a period of some sixteen or seventeen years—or, counting from the close of the war, of some thirteen or fourteen years, and *until after the death of Samuel Lipse.*

V. Even if Spears' estate could be held liable for the payment of the last instalment in Confederate currency in the fall of 1862, it should not have been held liable for the first instalment, of which $3000 was paid in Virginia bank notes, in October, 1861, and the residue in Confederate money on the 1st of March, 1862, when that currency was very slightly depreciated.

VI. Supposing Spear's estate to be liable at all, it should have been held liable for so much only of the pur-

chase money as had not been voluntarily received by the legatees—and, even if received by them under duress, for so much only, as exceeded the *value* of what was actually received and used by them—it was therefore erroneous in the court to decree a sale of the land, until accounts had been taken showing how much was really due from the estate of Spears to the legatees of Moses Lipse, deceased.

VII. If any one was liable to the legatees of Moses Lipse by reason of the receipt of Confederate money by Samuel Lipse as his executor, such liability rested upon said Samuel Lipse and those bound with him in his executorial bond; of whom David H. Lipse, his co-executor was one—(*Morrow v. Peyton*, 8 Leigh 54, *Littledale v. Robinson*, 2 Brock: 159.)

Yet the court has decreed in favor of David H. Lipse, that for which, if any one can be held liable, he is himself bound.

Respectfully submitted by

WM. J. ROBERTSON,
Of Counsel for Appellant.